United States Court of Appeals

for the Second Circuit

APPENDIX

76-6076

United States Court of Appeals

For the Second Circuit

B

Docket No. 76-6076

W. J. USERY, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR,

Appellee,

against

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Appellant.

UNITED STATES COURT OF APPEALS
FILED
MAY 21 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume 7 — 2311a to 2689a

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TABLE OF CONTENTS

	PAGE
Docket Entries	A-E
Complaint	1a
ummons and Notice of Examination Before Trial	8a
Defendant's Answer to Complaint	13a
Defendant's Interrogatories	20a
Plaintiff's Answers to Defendant's Interrogatories and Exhibits Annexed	44a
Plaintiff's First Set of Interrogatories Exhibits and Notice to Take Deposition	139a
Plaintiff's Request for Admissions and Exhibits A to EE Annexed	144a
Defendant's Response to Plaintiff's Request for Admissions	560a
Defendant's Supplemental Response to Plaintiffs Request for Admissions	564a
Plaintiff's Order to Show Cause and Affidavit In Support of Motion	572a
Exhibits A-B Annexed to Show Cause and Plaintiff's Affidavits	579a
Order—Withdraw Application for Contempt	593a
Notice of Motion For Adjournment and Memo Endorsed on Motion Filed June 24, 1974	599a
Plaintiff's Additional Response to Demand for Information—Berry Addendum	604a
Exhibits HB-1 to HB-9 and HB-10A to HB-12	610a
Addendum to O'Hanlon Deposition	670a
Exhibit BPO 1A-BPO 1B to BPO 2-BPO 3	675a

PAGE

Order dated October 15, 1974 ..... 757a

Addendum to O'Callaghan Deposition 759a

Exhibits A to M 762a

Addendum to Lowen Deposition—Plus Exhibit "C" to Lowen Deposition 809a

Exhibits A to E Attached to Lowen Deposition 813a

Exhibit "C" to Addendum of Robert Lowen ... 866a

Defendant's Answer to Interrogatories 1010a

Exhibit A 1014a

Exhibit B 1060a

Plaintiff's Order to Show Cause and Affidavit of Dennison Young, Jr. 1063a

Affidavit of Rosemary S. Page 1073a

Plaintiff's Order to Show Cause 1076a

Exhibits A-1 to A-4 and B-C 1084a

Defendant's Memorandum of Law 1095a

Defendant's Reply Affidavit 1104a

Transcript of Proceedings Dated October 25, 1974 .. 1111a

Defendant's Additional Responses, Part II 1127a

Exhibit A 1129a

Defendant's Affidavit—Lowen 1161a

Defendant's Verification—Lowen 1162a

Depositions of George M. Tutle, Jr. and Orion A. Larsen Dated November 4, 1974 ..... 1164a

Defendant's Affidavit—Callaghan 1258a

Plaintiff's Notice of Motion for Summary Judgment 1259a

PAGE

Statement Pursuant to Rule 9(q) and Documents .. 1261a

Memorandum of Law In Support of Plaintiff's Motion for Summary Judgment 1585a

Depositions 1699a

Stipulation 1770a

Defendant's Notice of Motion—Cross Motion and Affidavit of Marvin Schwartz on Behalf of Union . 1774a

Exhibits A, B, C, Annexed to Affidavit of Marvin Schwartz 1830a

Affidavit of Thomas W. Gleason In Opposition to Motion for Summary Judgment 1833a

Memorandum on Behalf of Union 1857a

Defendant's Statement Under Rule 9(q) 1872a

Defendant's Statement in Support of Motion 1878a

Amicus Curiae Brief 1884a

Plaintiff's Reply Memorandum 1907a

Appendix Accompanying Plaintiff's Reply Memorandum 1984a

Deposition of American Arbitration Assoc. dated October 10, 1974 ..... 2116a

Deposition of American Arbitration Assoc. dated October 24, 1974 ..... 2164a

Deposition of American Arbitration Assoc. dated November 19, 1974 ..... 2186a

Deposition of American Arbitration Assoc. dated November 20, 1974 ..... 2202a

Deposition of American Arbitration Assoc. dated November 21, 1974 ..... 2222a

Transcript of Proceedings dated October 11, 1974 .. 2237a

Transcript of Proceedings dated October 15, 16, 1974 2244a

Transcript of Proceedings dated October 25, 1974 .. 2309a

PAGE

Deposition of Lowen dated May 23, 1974 ..... 2311a

Deposition of Lowen dated May 29, 1974 ..... 2425a

Deposition of O'Callaghan dated May 22, 1974 ..... 2527a

Continued Deposition of O'Callaghan dated June 27, 1974 ..... 2600a

Memorandum Opinion dated March 17, 1976—#44077 ..... 2860a

Judgment and Order dated April 15, 1976 ..... 2892a

Order of C. B. Motley, U.S.D.J. dated May 5, 1976 .. 2896a

Defendant's Notice of Appeal 2897a

Defendant's Undertaking for Costs on Appeal 2899a

Stipulation that Certain Documents be Transmitted as Part of the Record on Appeal 2903a

Signed and Notarized Copies of Final Pages of Callaghan Deposition 2906a

Copies of Final Pages of Lowen Deposition 2908a

Copies of Master Lists marked as Exhibits 2910a

Letter dated April 22, 1976 to Judge Motley 3022a

Letter dated April 1, 1976 to Judge Motley 3025a

Letter dated March 30, 1976 to Judge Motley 3033a

Proposed Counter-Judgment and Order Attached to Letter dated March 30, 1976 to Judge Motley 3036a

Letter dated March 23, 1976 to Judge Motley 3039a

Notice of Settlement and Proposed Counter Judgment and Order 3041a

Letter dated March 1, 1976 to Motley, *J.* 3046a

Letter dated February 26, 1976 to Motley, *J.* 3053a

PAGE

Judgment of United States Court of Appeals for the Second Circuit, etc. 3059a

Letter dated February 26, 1976 to Judge Motley annexed Appellants Brief 3079a

Letter dated January 15, 1976 to Motley, *J.* 3123a

Letter dated December 23, 1976 to Motley, *J.* 3126a

Letter dated November 25, 1976 to Motley, *J.* 3130a

Memorandum 3134a

Letter dated July 7, 1975 to Motley, *J.* 3150a

Letter dated June 25, 1975 to Motley, *J.* 3151a

Letter dated March 3, 1975 to Mr. Young from Motley, *J.* 3152a

Letter dated February 12, 1975 from Judge Motley to Mr. Cohen 3153a

Letter dated February 5, 1975 to Judge Motley 3160a

Letter dated October 15, 1974 from Mr. Young to Mr. Schwartz .....

Deposition - Lowen dated May 23, 1974

U.S. DISTRICT COURT
FILED
JUN 16 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES D. HODGSON, Secretary of Labor, U.S. Department of Labor,

Plaintiff,

-against-

72 Civ 5031

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Defendants.

May 23, 1974
12:30 p.m.

Continued deposition of ROBERT J. LOWEN, taken by plaintiff pursuant to notice dated June 2, 1973, held at the United States Attorney's office, U. S. Courthouse, Foley Square, New York, N.Y., Room 329, before Anthony Mancuso, a shorthand reporter and Notary Public of the State of New York.

APPEARANCES:

PAUL J. CURRAN ESQ.
United States Attorney for the Southern District of New York
BY: JOSEPH P. DANAS,
DENNISON YOUNG, JR.
BOBBY C. LAWYER,
Assistant United States Attorneys

VOL #9

APPEARANCES CONTINUED: 1A

MARVIN SCHWARTZ, ESQ.
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ALSO PRESENT:
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U.S. Department of Labor, Management Service Div.

PHILLIP J. MONDELLO, ESQ.
U.S. Department of Labor

- - -

ROBERT J. LOWEN, called as a witness by the plaintiff, being first duly sworn by the reporter, testified as follows:

MR. DANAS: To clarify the record, I would like to at the outset state that this deposition is being taken pursuant to a notice to take deposition of Robert J. Lowen, secretary-treasurer of the International Organization of Masters, Pilots and Mates; said notice is dated July 2, 1973, filed with the Court July 5, 1973 and has been continued by agreement and stipulation between counsel from that time to this date.

DIRECT EXAMINATION

BY MR. DANAS:

Q For the record, what is your full name, sir?

A Robert J. Lowen.

Q What is your address of residence?

A I live in Alamo, California and I have a post office box there.

Q What is your age, sir?

A 48.

Q Would you state briefly your educational background?

A I'm a high school graduate, I attended

Northwestern University for about two and a half years and I'm a graduate of the United States Merchant Marine Academy at Kings Point, New York.

Q With what degree?

A A Bachelor of Science.

Q Now, what is your current position with the defendant, Masters, Mates and Pilots Union?

A I am the International secretary-treasurer.

Q For how long have you held that position?

A Since late April, 1971.

Q Prior to April of 1971, did you hold any position with the defendant union?

A I was the assistant to the International President.

Q Is that an elected post?

A No.

Q When did you assume your duties in that capacity

A In the beginning of December, 1970.

Q I gather that was an appointed post by the then President?

A That's correct, it was a staff position.

Q What were your duties in that capacity, assistant to the President of the International?

A My duties consisted of processing the

grievances that we had for about a year on collective bargaining agreements.

Q You say a

A Yes.

Q Did you analyze the grievances?

A Yes.

Q What did you do with them?

A I processed them to try to collect money for our members.

Q Is that a salary position?

A It was the job I was assigned and yes, I received a salary.

Q Prior to that position, did you hold any other position with the union?

A No.

Q What was your employment background prior to December 1970?

A I was a master of an oceangoing vessel.

Q For how long a period?

A Continuously since 1962 on various ships.

Q Now, in April of 1971, you stated you became secretary-treasurer of the International?

A That's correct.

Q How did that come about?

A I was elected at a general executive board meeting.

Q What occasion prompted this election to take place?

A The general executive board meeting itself.

Q Let me go back.

I understood that the secretary-treasurer was normally a position that was elected by the general membership of the union?

A Yes.

Q Why was that not the procedure followed in April of 1971?

A The previous secretary-treasurer died.

Q What was his name and when did he die?

A Charles M. Crooks and it was either at the very end of 1970 or the beginning of 1971.

Q In any case, it was prior to your election by the executive board?

A Yes, it was.

Q Did the then existing constitution bylaws of the International provide for such election by the executive board in the case of the death of an International officer?

A Yes.

Q Were there nominations at that executive board?

A No.

Q Did you have any opposition?

A No.

Q Who placed your name before the board?

A I don't remember.

Q Do you recall whether you solicited the position or you were solicited?

A No, I had not solicited the position.

Q Somebody asked you would you care to be nominated and elected?

A Yes.

Q What in general terms are the duties of the secretary-treasurer of the Masters, Mates and Pilots, as they have existed from April '71 to the present.

A The duties of the secretary-treasurer are to take care of the financial affairs of all the fully formed divisions, and the major thrust of the duties is to handle the grievances under our collective bargaining agreements.

Q You used the term "fully formed division," what does that indicate?

A It's a unit of the International Organization of Masters, Pilots and Mates that has voted to form a division within the structure of the organization.

Q Would you name those fully formed divisions?

A Yes. At this time the two divisions are the offshore divisions and the pilots division.

Q Now prior to the reorganization of the union, there was an inland division, is that still in existence?

A That is not correct.

Q Okay.

Is there now in existence an inland division?

A No.

Q Was there ever in existence an inland division?

A No.

Q What is the status of the inland locals at this time?

A The inland locals have combined to become two semi-autonomous regions.

Q What are those two regions?

A The west coast, the Pacific region; and the Atlantic and Gulf region.

Q In what manner did they effect such combination?

A The membership voted to merge the locals into a region.

Q Approximately how many members are there of those two inland divisions? You didn't refer to them as

divisions, what did you call them?

A I called them regions.

Q Regions.

A Roughly 1,000 on the west coast and 700 on the east coast.

Q What about the size of the fully formed pilots division, in terms of membership?

A Approximately 700.

Q And the offshore division?

A Approximately 6,000.

Q Now, do either the offshore division or the pilots division have any sub-divisions or area designation within them?

A Yes.

Q With regard to the offshore division, what are those designations?

A We have regions inside of the offshore division too.

Q Would you name those, please?

A It's the Atlantic, the Gulf and the Pacific.

Q What about for the pilots division?

A The pilots division is composed of branches.

Q How many branches exist and would you name them, please?

A I don't think I can name them all; somewhere between 20 and 30.

Q With regard to the pilots division, what is the basis of the breakdown into 20 or 20 divisions?

A They are the -- each, you mean branch?

Q Branches.

A Each branch is composed of pilots who work in a particular port.

Q Now, sometime in 1970, a new constitution of the International was adopted, was it not?

A Yes.

Q Briefly, would you state the mechanics of such adoption within the union?

A I was not an official at thattime or even employed by the union.

Q Do you know whether it was done by referendum?

A It was done by referendum ballot, yes.

Q Approximately when was that referendum conducted?

A It was some time in 1970.

Q Do you know whether the referendum included all members of the union?

A I have no knowledge of that.

Q What are the duties of the secretary-treasurer

of the union with regard to elections and referendums, in general?

A You have to be more specific.

Q All right.

With regard to the election of officers of the International and the fully formed divisions, what duties, if any, does the secretary-treasurer of the International undertake?

A The secretary-treasurer of the International receives nominations for elective posts, notifies the nominees of their nomination and gets their acceptances and publishes a notification of acceptance or elective office.

Q Similarly, what are the duties of the secretary-treasurer of the International with regard to referendums?

A Nothing, depending on the referendu m.

Q Let's take a union-wise referendum, such as an affiliation with the ILA or such as a new constitution being put before the membership.

What duties would the secretary-treasurer have in those cases?

A Act for the ballot committee as they request me to.

Q In mid-1971 there was a referendum put before

membership of the Internationl with regard to affiliations with the ILA, is that correct?

A That's correct.

Q At that time you were the secretary-treasurer of the International?

A That's correct.

Q With regard to that referendum, would you explain what your duties were, in detail?

A I had absolutely nothing.

Q Who sent out the ballots for that referendum?

A The ballot committee.

Q Where was that ballot committee chosen?

A I don't even remember.

Q When was it chosen?

A I don't remember.

Q Was it at the convention in Galvaston in 1971?

A It may have been. I have to check and recall that.

Q Did the ballot committee request a mailing list so that they could mail the lists to members?

A I think they had that with the AMA.

Q They never requested a mailing list from your office?

A They must have.

Q Your answer is yes, they must have?

A I'm saying I assume they did, yes.

Q Well, if they received it from your office why would they go to the AAA?

A They don't receive a mailing list; the AAA receives mailing lists.

Q So then the AAA must have requested it from your office?

A Yes.

Q Approximately when would that have been, with regard to that ILA referendum number 2?

MR. SCHWARTZ: He says they asked nothing of him and he had nothing to do with it.

MR. DANAS: He stipulated it was submitted to his office in the AAA.

MR. SCHWARTZ: He has no knowledge himself. He himself wasn't involved.

Q In the course ofyour duties as secretary-treasurer of the International, do you keep books and records?

A Yes, our controller does.

Q Those are financial books and records?

A Yes.

Q What about interoffice memoranda of your activities?

A Of my activities?

Q Yes.

Do you keep carbon copies of letters?

A Yes.

Q And copies of other reports you sent out?

A Yes.

Q Would you r records reflect what your activities were with regard to the ILA referendum and the provisions of mailing lists to the AAA?

A They would reflect it if I had anything to do with it, yes.

Q They would reflect the dates and whatever was done?

A Yes.

MR. DANAS: I would like to leave a space in the record.

MR. SCHWARTZ: Why don't you tell me what you want and I'll make a note of it and get it for you?

MR. DANAS: From the records of the secretary-treasurer's office, I would like a chronological list of activities with regard to the ILA referendum.

MR. SCHWARTZ: His lists of what he had?

MR. DANAS: Right, or those under his control.

Q Now, do you know whether your predecessor, Mr. Crooks, also kept records in the normal course of his activities as secretary-treasurer?

A Not of my own personal knowledge, but he has corresponded there, yes.

Q I'd like to ask you to go through that correspondence or whatever records he kept in the normal course of business and simply, I'd like a chronological list of mailing lists provided and the other activities of the secretary-treasurer with regard to the new constitution referendum in 1965.

MR. SCHWARTZ: All right. The new constitution referendum. Now, again, as I indicated yesterday, that's all set forth in that case that's been up to the Courtof Appeals. The case decided by Judge Knapp. I will get it and I will sit down with you and maybe that will be the easiest way.

MR. DANAS: If that material in Judge Knapp's case does provide the information we are seeking, obviously it will preclude and make unnecessary a search of the official records.

MR. SCHWARTZ: We had to carefully go through

just how we went about doing this. How the new constitution referendum was set up.

MR. DANAS: Okay.

Q The ballot committee you referred to with regard to the ILA referendum, was that the same ballot committee as the International ballot committee which handled the 1971 election of officers?

A To the best of my knowledge, no.

Q Do you know whether the two committees were chosen at the same time?

A I just don't remember.

Q Or in the same manner?

A I beg your pardon?

Q Or were they chosen in the same manner?

A Probably in the same manner; probably at the same time.

Q With regard to the International ballot committee election of officers, when and how was that committee chosen?

A That was chosen at the convention.

Q Galvaston, 1971?

A That's correct.

Q Were you present at that convention?

A Yes, I was.

Q Did you personally nominate anyone for the position of International ballot committee member?

A Not to my knowledge.

Q Did you second any of those nominations?

A I don't remember. It was a long time ago.

Q Now, at the convention in 1971, your name was put up, I gather, for reelection as secretary-treasurer?

A That's correct.

Q Do you recall who nominated you for that position?

A Yes, I do.

Q Who was that?

A Captain Guyer.

Q What is his position -- what was his position in 1971?

A In 1971, he was the port agent of the port of New York.

Q Does he still hold that position?

A Yes, he does.

Q So to the best ofyour recollection, the ballot committee which handled the ILA referendum was also chosen at the Galvaston convention, isthat true?

A I think so, I just don't remembe r where that ballot committee was chosen; it must have been at a

convention.

Q Do you recall having had any part in the choos ing of that ILA affiliation committee?

A I don't recall, no.

Q Was the ILA affiliation discussed at the'71 Galvaston convention?

A Yes.

Q Were there officers who spoke pro-affiliation?

A Yes.

Q Were you one of those officers?

A No.

Q Was Captain O'Callghan?

A Yes.

Q Who else do you recall spoke for affiliation?

A Mr. Gleason addressed the convention.

Q Do you recall in general terms what reasons Mr. Gleason put forth to the membership for affiliation?

A In general terms: Establishability on the waterfront, protection of our jurisdiction by affiliation with the ILA, insuring that our picket lines would be respected. Roughly, that's about it.

Q Did Mr. Gleason, in his speech or speeches, make any reference to Capt. O'Callghan?

A Yes, I assume he did.

MR. SCHWARTZ: We're talking about your own recollection now.

THE WITNESS: I don't recall, no.

Q You have no recollection in general terms of t references, positive references?

A That's a long time ago. I think it's all in the verbatim of the convention.

Q Do you have any recollection as to whether Mr. Gleason made any reference to yourself?

A No, I don't have any recollection.

Q Now, in the course of your duties as secretary treasurer, is it necessary for you to be familiar with the International's constitutional bylaws?

A Yes.

Q Were you so familiar in August, 1971?

A Imperfectly.

Q How about April of '71?

A More imperfectly.

Q What about with regard to your duties starting in December of 1970 as assistant to the President; did you have occasion to become familiar with the constitutional bylaws at that time?

A Even less, then.

Q You had to have some knowledge at that point.

A only as a memory.

Q Weren't Gleason's procedures covered to some extent by the constitutional bylaws?

A Not at all.

Q Not at all?

A Not at all.

Q Can you describe to me the structure of the union, indlucing the International, any divisions and local as it existed when you assumed the position of secretary-treasurer in April of 1971?

A At that time, there were the two fully formed divisions that I mentioned before, a number of inland locals on the east coast and I'm not certain if the west coast had locals then or they had already voted to form a region.

Q With regard to the two fully formed divisions, were they comprised of various local divisions or unions?

A No, they were a division.

Q I'm now referring to April of 1971.

A April of '71? They were comprised, just as I described earlier, the pilots had branches.

Q Was there a time that the offshore division and the pilots division were comprised of local groups?

A Yes.

Q Up until when was such organization in effect?

A The offshore division formed as of January 1, 1971; the pilots division, some time shortly after that. I would have to check the exact records, since they had a ballot.

Q I assume that that January, '71, reorganization of the offshore division was pursuant to the new constitution that we discussed earlier or the constitution that had gone into effect some time in 1970?

A That's correct.

Q Prior to January of 1971, were you yourself a member of any offshore division?

A I was a member; I was a member of an offshore local.

Q Which local was that?

A 14.

Q Where is that located?

A Baltimore.

Q For how long had you been a member of that local?

A Since 1953.

Q Between 1953 and December of 1970, did you hav occasion to run for any local position at Local 14?

A Never.

Q Did you ever act as convention delegate from Local 14?

A No.

Q During the approximate 18 years of your membership or affiliation with Local 14, could you briefly describe the structure of that local and on a day to day basis, who and how the affairs of the local were carried on?

A I can't.

Q Why not?

A Because I don't think I was in the local -- in the offices more than three times in the 18 years.

Q Do you know whether Local 14 had periodic meetings?

A I don't know.

Q Do you know whether it maintained its ocean treasury?

A I don't know.

Q Do you know whether it collected dues?

A Of course.

Q Do you know what its dues were, those dues once collected?

A I assumed it used them for the administration

of the local.

Q So it did maintain a treasury?

A It must have, yes.

Q What about assets, did it own the building it occupied?

A I don't know.

Q Office furniture?

A At that time, I don't know what they had.

Q When you are referring to that time --

A In the 18 years that you said I was a member of Local 14. One doesn't require much of an understanding in 3 times 18 years.

Q I gather you spent most of those years at sea?

A Yes, overseas and at sea, yes.

Q Which ship were you captain of during that period?

A Which period?

Q Those 18 years at sea.

A I was master on the Cotton State, Magnolia State, the Bayou State, the Gopher State, the Old Dominion State.

Q Are those transatlantic ships?

A They were worldwide travelers.

Q I gather during that period or the lion share

of that period you were fully employed?

A Yes, I have always been fully employed.

Q With regard to your experience, what does full employment mean with regard to number of days at sea per year?

A Well, my pension record shows covered employment, and an average of 363 days a year.

Q Does that indicate you were at sea for 363 days a year?

A That indicates I was either at sea or paid vacation accrued as a result of being at sea.

Q Can you further refine that 363-day figure to give us a better idea as to how many days you were actually at sea as opposed to a paid vacation?

A It would depend on the -- what the vacation schedules were, they changed. The last ship I received 10 days a month for each 30 days I was on the ship. So if I sailed for a straight year, which I used to do, then I would have three months vacation. Going back in years it was a little less, 8 days a month, 7 days a month, which meant you were at sea longer.

Q Was there any approximate figure you could give us with regard to the average length of a voyage during that 18-year period?

A No. As I indicated we mostly tramped, so a voyage could be anywhere from 190 days to a coastwise voyage for one week. It depended on the run we were on the berth we were assigned to.

Q Did you have many one-week runs?

A Very few.

Q What would generally be the minimum trip that you took?

A Again it depends on which part of the world you go to. Name a part of the world and I'll give you a typical trip.

Q How about South America?

A South America we never called at.

Q How about Europe?

A Europe? On a European run we might load in New York, then go transAtlantice to Iceland, England, Germany, France; come back and load in England again; come back to New York or go down to Cheasapeake -- we ususally made the Delaware, the Cheasapeake --

MR. SCHWARTZ: He wants to know how long that would take.

THE WITNESS: That would take about 36 days.

Q Now, in the course of these voyages, were you able to receive mail?

A Yes, we received mail.

Q How was that delivered?

A The steamship company forwarded it to our agents.

Q You received them where, at port that you put into?

A Yes.

Q In the course of those 18 years, did you receive communications of any type from the International Organization of Masters, Mates and Pilots?

A I received ballots a couple of times, yes.

Q On those occasions they were received at some port that you put into?

A That's right.

Q What about correspondence from Local 14?

A I don't ever remember receiving any.

Q Do you recall on how many occasions you received ballots from the International during those 18 years?

A No, I can't remember.

Q Do you recall receiving ballots from the International at your home, Baltimore?

A I don't live in Baltimore and I didn't.

Q Okay. Your home in California.

A I didn't live in California, then.

Q Where did you live?

A I lived in New York, in Yonkers.

Q Do you recall receiving ballots from the International at your home in Yonkers?

A I recall receiving ballots in Yonkers, yes.

Q Do you recall how many, approximately, you received at your home?

A No.

Q Does Local 14 still exist?

A I think it's what we refer to as a dear departed.

Q Does it exist in any form today?

A I don't think it exists in any form now.

Q Just to be clear: Local 14, you stated, comprised Baltimore and what other areas?

A Local 14 comprised -- was comprised of inland and offshore people. Both of them -- one is in our region the other is now part of a division.

Q With regard to the offshore portion of Local 14, was that it with regard to Local 14 or were there other port regions?

A There were other port regions.

Q Whose members were also members of Local 14?

A Yes.

Q What regions were those?

A Philadelphia, Norfolk, Savannah and Charlston, I believe.

Q Are those also members of the dear departed?

A They were also, dear departed.

Q Do they exist in any form today?

A No.

Q Is there a group in existence today, called the Port of Baltimore?

A The Port of Baltimore? The Port of Baltimore is on the Chesapeake Bay.

Q Not physically; is there a group within your union?

A That's one of our ports, Baltimore.

Q There is a group or a conglomeration of members referred to as The Port of Baltimore, is there not?

A No, there is a physical presence, but there is no member, per se, in a port of Baltimore.

Q I thought, under your new set-up, the offshore division comprised varous ports?

A Yes.

Q What is the relation as it now exists between these various ports and the offshore division?

A The various ports arethe physical presence of the offshore division and provide a physical presence in which any member of the offshore division, regardless of whether he lives in Seattle or Galvaston or New York or Maine, can come into that physical entity and say, "I want a job."

Q Do these ports maintain offices?

A Yes, that's what they're there for.

Q Do they have a staff of officers?

A They have a staff of officers, yes.

Q This is true of each port within the offshore division?

A That's correct.

Q What is the title of the officers of these local ports?

MR. SCHWARTZ: This is all in theoffshore division bylaws and I see you got it on your desk.

MR. DANAS: I will go through it very quickly.

MR. SCHWARTZ: Let me have it and I will show it to you.

Q Can you answer that question?

MR. SCHWARTZ: Let me say this to you:

Article III, on pages 2 and 3, show the layout for the offshore division. It tells you what you have in

the different ports.

MR. DANAS: Okay. Mr. Schwartz has directed my attention to Article III, Section I of the bylaws of the offshore division, Masters, Mates and Pilots International, subsection B therefore refers to the fact that each port shall elect a port agent and/or executive assistant port agent and/or assistant port agents.

Q Briefly, Captain, would you describe whatthe duties and functions of the port agent is as they now exist?

A The port agent is responsible for the day to day administration of the port to which he has been elected.

Q Briefly comprising what types of activities?

A Briefly, the function of the port is to serve as a hiring hall for officers to be dispatched under our collective bargaining agreement. They will take -- or the people that work for them will take a job order from a company; will put it up on our shipping board and they will administer the bidding by individual officers to try to get that particular job.

Q Do these port regions or port officers handle grievance procedures?

A Yes.

MR. SCHWARTZ: I'm letting you go pretty far. I don't know of a thing in the complaint that is relevant.

MR. DANAS: We believe it is.

MR. SCHWARTZ: You're going to have to tell me

MR. DANAS: As I believe I mentioned yesterday, with regard to our requested relief here, if we do get a supervised election, there will be questions as to what structure such supervised election will be run under.

MR. SCHWARTZ: If that's the reasons, I am going to instruct the witness not to answer any other question. You will have ample opportunity, if you win this case.

MR. DANAS: I think we are working under time pressure here.

MR. SCHWARTZ: In any event, I am not going to let you ask questions on the assumption that you may win the lawsuit.

MR. DANAS: This is pre-trial discovery.

MR. SCHWARTZ: I understand all that. But I think you have the union's constitution. You have the bylaws and you have asked questions there, that I am going to instruct the witness not to answer any more of these type of questions.

MR. DANAS: Okay.

Q In general terms, the function and duties of the port agent as they currently exist, do they differ from the functions and duties of the old local agents in any way and if so, in what way do they differ?

A They differ in that they no longer have the physical responsibility for generating the revenue that is required to support their port.

Q Where are the revenues generated?

A From the membership as a whole.

Q In other words, under the current set-up, the revenue is funneled from the offshore division to the International?

A No.

Q To where?

A The offshore division to the offshore division.

Q From the local port office of the offshore division?

A That's correct.

Q To the officers of the offshore division?

A That's correct.

Q From there it's allocated among the ports?

A That's correct.

Q Who are currently the officers of the offshore division?

A Which officers?

Q The division officers.

A The division officers, the three International officers of the offshore division. The offshore division has three vice president and port agents.

Q The three International officers are Captain O'Callghan as President, yourself as secretary-treasurer and Mr. Caldwell?

A Captain Caldwell.

Q Captain Caldwell is vice president?

A Yes, executive vice president.

Q Those three persons are also President, executive vice president and secretary-treasurer of the offshor division, is that correct?

A That's correct, but I don't think it's in really those terms. Yes, I guess it's correct.

Q You also mentioned with regard to the offshore division that they were executive vice presidents?

A No, I said vice president. Captain Caldwell is the executive vice president.

Q How many vice presidents are there?

A Three.

Q Who are those persons, currently?

A Atlantic vice president is Captain Joseph

Guyer; the Gulf vice president is Captain Robert Jones; and the west coast vice president is a Captain Orion Larsen.

Q How or in what manner are those last three gentlemen, the vice presidents, chosen?

A They were elected by the membership.

Q Which membership?

A The membership of their particular local at the time the '71 election was generated.

Q Captain Guyer was chosen by the New York local as its president?

A No. He was formerly the president of the New York local. He is the port agent.

Q I'm referring to 1971; he was chosen as the New York president?

A No.

Q Was there a president of the New York local in 1971?

A No.

Q He was chosen as the port agent?

A Correct.

Q He automatically became the Atlantic offshore vice president?

A That's correct.

Q The same thing with Captain Jones in the Gulf area?

A Yes.

Q And Captain Larsen in the Pacific area?

A That's correct.

Q Now, in general, what are the functions of the officers -- well, let's take the three top officers, yourself, Captain O'Callghan and Captain Caldwell, with regard to the off shore division.

A Which do you want first?

Q All three, in general, what are their duties, responsibilities and functions, with regard to the offshor division?

A The president of the organization is charged with all of the duties and responsibiiities of all fully formed divisions. He is really the prime negotiator for the offshore division; is the one who sets the perameters for what's to be done; guides the secretary-treasurer, the executive vice president and direct the activities of the vice presidents in their particular regions.

Q What about your duties with regard to the offshore division?

A My duties are : I am the contract enforcement officer for all of our contracts and I am also the chief

fiscal officer of the division.

Q With regard to finances of the offshore division, what exactly do you do; what do you determine with regard to finances?

A I have a controller and four employees who assist the controller. I oversee the controller's work and insure that the due revenues are collected properly; that the ports are notified when people fall in arrears in their dues and insure that their checking accounts be properly replenished so that they can pay for the administrative expenses at their particular ports.

Q Do you also disburse funds to the various ports?

A Yes, I said we do that.

Q For what purpose?

A For administrative expenses. They maintain a checking account in each port.

Q Do you determine a budget for the ports?

A The offshore division bylaws called for --

MR. SCHWARTZ: The question is:

Do you determine the budget.

THE WITNESS: No.

Q Do any of the officers, Captain O'Callghan, yourself, Captain Caldwell, determine budgets for ports

in the offshore division?

A No.

Q How are those budgets determined and by whom?

A There is no budget determined, per se.

Q What controls -- does your office compose with regard to the disbursement of monies to the port regions?

A The controls that we have -- most of the costs are fixed costs. The controls that we have are primarily in respect to expense accounts to determine that the expense accounts are proper and sending them back when necessary or asking for explanations so that they are properly supported.

Q With regard to the ports, is there any play or any independent judgment with regard to how much they can spend on their part or is it composed by the offshore division officers?

A Well, the amount of money they can spend is limited by the amount of money they are remitted by the offshore division.

Q For any given fiscal year, when are they informed how much they will be remitted by the offshore division?

A They are remitted what is necessary to keep their expenses to operate port.

Q Let's assume a fiscal year begins January 1.

MR. SCHWARTZ: Part of the problem is the way you're asking the question and I know it is not intentional and I know that this stuff is complicated. What the witness is trying to explain to you is that there are certain expenses that are fixed. Salary is set, rent is sent, staff expenses, like the secretary, it's set. If there's any expense beyond that, it is almost invariably in the form of an expense account. What they are doing is they are sending money so that they can meet these fixed salaries and take care of those things. That's basically all they are doing.

MR. DANAS: I thank you for the explanation.

Q Based on Mr. Schwartz's explanation, let's assume in year 1, fixed expenses came to "X" amount of dollars and the local port foresees or would like to build up salaries for the following year or put on a new officer which would up salaries or would like to expand their --

MR. SCHWARTZ: You got several things that the can't do, you're asking, and there are several things that they can do.

MR. DANAS: Okay. I'll go through them one by one.

Q Can they request that their officers' salaries be increased for the following year?

A No.

Q When, prior to the following year, are they informed as to what the total salary role will be?

A Their salary remains fixed until it is changed by a membership referendum.

Q What about rentals, rents?

A Rentals? We have leases; we sign a lease so we know what the rentals are going to be.

Q Who signs the lease?

A Either myselfor sometimes the individual port officers.

Q When a lease is up, do you go in and negotiate a new one?

A I have.

MR. SCHWARTZ: I'm having the same problem. I'm trying to figureout how this is relevant to anything you have in your complaint.

MR. DANAS: I will cut it short.

Q I gather that the officers are still chosen by the local membership, is that correct?

A No.

Q How are the individual port officers chosen?

A The individual port officers in this election coming are going to be chosen by the membership at large.

Q Now, with regard to the 1971 election, what were your duties as secretary-treasurer with regard to that election, which duties were composed by the constitution then in effect?

A The only duties I am required by the constitution to do is to certify the eligibility of candidates and their good standing and the good standing of voters, of the ones that I have physical responsibility for.

Q With regard to certifying candidates, beyond being paid up members, what other factors did you have to look at with regard to their certification?

A They had to be a member of record in -- in 197 you're speaking?

Q Yes.

A They had to be a member of record of the particular local in which they were running for office.

Q Beyond that, were there any criteria for certification?

A Yes, they had to be nominated by the -- at least two members in good standing of the same particular local.

Q -- Any beyond that?

A Not that I can recall.

Q What about the certification --

A They had to comply with the requirements of the Labor Management Reporting Act for certification. They hadn't been convicted of a felony and they are not a member of another active union is what our constitution requires.

Q How did you, as secretary-treasurer, obtain all that information?

A In 1971 we just examined our membership roles.

Q This is on the candidates?

A Yes.

Q Which membership roles are you referring to?

A The ones that I have control over.

Q Located where?

A In New York.

Q In 1971?

A In New York.

Q Were those computerized in 1971?

A Yes.

Q How were those membership roles comprised -- compiled?

A I don't understand the question.

Q Well, you had membership roles in New York on

computer tape and they got there in some manner, somebody fed the tape; how did those names get there?

A They were provided by the former locals with their members of record as of December 31, 1970.

Q So, it was some time subsequent to December 31, 1970, that those names were provided by the former locals, is that correct?

A I'd say yes. I don't know, because I just come into the office then.

Q Would the records that your predecessor kept reflect when these names came in to the local subsequent to December 31, 1970?

A I don't know.

Q Would you check the records?

A Yes.

MR. SCHWARTZ: I'm not sure I know what you want there.

MR. DANAS: There was a computerized membership role in existence and the Captain has stated that those names on the role were provided by the former locals

I'd like to know when they were provided prior to or subsequent to December 31, 1970.

MR. SCHWARTZ: When the information was supplied to the computer --

MR. DANAS: No, no.

I want to know when it was supplied to the International office.

MR. SCHWARTZ: That's where the computer is?

MR. DANAS: There may have been a gap.

MR. SCHWARTZ: All right. When it was supplied to the International office. You're specifically interested in knowing whether it was before or after December 31, 1970?

MR. DANAS: If it is available, the date when those names were received.

MR. SCHWARTZ: Okay.

Q Now, with regard to those names, whenever they were received by the International office, what did you as secretary-treasurer do, if anything, to check those names and in some way check their accuracy?

A I wasn't secretary-treasurer, when the computerized records were being set up.

Q Do you know whether your predecessor did anything with regard to the names provided by the locals?

A He was in a terminal cancer state at that time.

Q Do you know if anybody in the International's office did anything to check those records?

A I don't know.

Q When you assumed the position of secretary-treasuer in April of 1971, did you do anything or did anyone under your supervision do anything to check the then existing membership role at the International's office with regard to accuracy?

A Yes.

Q What was done in that connection and when was that done?

A We had a continuing check on thenames that were submitted, since they had a lot of trouble with the computer program. We found all different Social Security numbers and since the -- our records are on a Social Security number, we find we couldn't ever find who anybody was in some areas and we had to do a lot of writing or the controller did at that time, to the different ports and different individuals to try and insure what their proper Social Security numbers were.

Q How did you go about checking those Social Security numbers?

A By writing.

Q What about the other information, did you check the standing of the members?

A I don't understand what your question is.

Q Did you have any way of determining which of those members that were on the membership role were in good standing and were which were not?

A We found different Social Security numbers when people paid dues. We got a letter and, "I paid $75 and whose this guy you sent me a receipt to?"

Q So you made attempts to check the accuracy in that regard; what about with regard to addresses of the residence of members on the list, did you check that?

A Yes, we have a continuing check on that all the time.

Q Approximately how often per year was that checked?

A Every day.

Q In what manner?

A We receive change of address cards from individuals; we receive change of address cards forwarded by ports where the individual files it in the port and we receive as many as 120 a month, change of addresses.

Q This is ongoing now?

A It is an ongoing procedure.

Q What about in 1971, were you doing this then?

A Yes.

Q What about all the other information that you

needed for certification of candidates in regard to convictions for felonies, etc., how did you ascertain that?

A They were required to submit an affidavit as a candidate.

Q To you?

A Correct.

Q Do you recall in 1971, whether you refused to certify any candidates?

A No, I don't remember. I'm sure the records would reflect, I just don't remember.

Q Now, you stated also in your capacity as secretary-treasurer, you had a duty to certify voters, is that right?

A Yes.

Q What criteria were used in that regard?

A His dues standing.

Q Were there any membership dates involved as there were with the candidates?

A I don't quite understand what you mean by that.

MR. SCHWARTZ: Let me say again:

As far as I know the only complaint that was -- the only issue raised in the complaint with regard to nominations related to Local 47. As far as I know that

was the -- given as the basis for that allegation in the complaint, in the answer to the interrogatories; if that's what you're talking about. I suppose there is general information you're interested in.

With all the time pressures we have, you have a lot of stuff here that could be obtained from records and doesn't either relate to your specifications in the complaint or your answer to the interrogatories.

MR. DANAS: I believe it does and I think it is worth your while for a while.

MR. SCHWARTZ: How does it relate?

MR. DANAS: Membership lists, we certainly have allegations with regard to the use and denial of membership lists. We are certainly entitled to know what those membership lists are and how they were compiled. That's what I'm talking about now, membership lists.

MR. SCHWARTZ: The denial of the opportunity to inspect the membership lists?

MR. DANAS: Right. We want to know what the denial was, if it existed. What were they denied the use of; and up-to-date lists.

MR. SCHWARTZ: You said that the complaint you have is that these lists weren't maintained in New York, San Francisco and New Orleans; that they had to check this

list in New York?

MR. DANAS: We are entitled to know what the lists were; how they were compiled and how they were maintained.

MR. SCHWARTZ: You're now back about a year or so before.

MR. DANAS: I'm in April of '71. When the Captain took over as secretary-treasurer.

MR. SCHWARTZ: All right.

Q In April of 1971, did the union's membership roles maintained by the International contain any information with regard to ships that the members were assigned to?

A No.

Q Do they today?

A No.

MR. SCHWARTZ: Incidentally, you asked that the other day. I'm unaware of any statement ever being made in any answer to interrogatories that relates to the maintenance of a ship's list and I really don't understand the relevance of it.

Is there some claim here that they should have maintained a ship's list?

MR. DANAS: I don't think we have put it in

those terms.

MR. SCHWARTZ: What terms have you put it in? What is the relevance of a ship's list?

MR. DANAS: I am merely trying to ascertain what the lists included and what they didn't include; that's the relevance.

MR. SCHWARTZ: Do you make some claim that there should be a ship's list or did anybody ask for a ship's list?

MR. DANAS: Yes, there were requests for ship's lists.

MR. SCHWARTZ: Do you say that in your answers to the interrogatories anywhere?

MR. DANAS: I don't recall. I'll have to search it.

MR. SCHWARTZ: Let's take a look at it now and be sure.

MR. DANAS: We are not going to be on it for more than two or three questions. I don't think it's worth my time to check it.

MR. SCHWARTZ: Between now and the next witness, let's check it. We will pin that down.

Q In your tenure, as secretary-treasurer, have you ever suggested that any ship's list be maintained?

A No.

Q To your knowledge, has the union ever maintained such lists?

A No.

Q Now, in the 18 years that you have put in at sea, you stated that you received ballots while at sea?

A Yes.

Q Doesn't that indicate to you that the International maintained a list of the ship or company at least that you were working for?

A No.

Q How did it occur that the ballots were sent to you overseas?

A They are mailed to my home address and they are forwarded from my home address to the sea, just as the are for every seaman.

Q What if there is no one home?

A Then they sit there, if there's no one home.

Q You don't vote in that election?

A Not unless I come home.

Q If you are away during the three-month period and no one is home, you don't vote?

A That's right.

Q Hasn't this situation, considering the length

of your members' voyages concerned anyone at the union?

A I've never heard anyone say a single word about it. It's something that every maritime union has.

Q As you sit here today, do you see any possible problems?

MR. SCHWARTZ: There will be no further questions and answers in that regard. I am not going to have him speculate as to problems. You make that argument to the Judge.

MR. DANAS: Let me finish the question.

Q As you sit here today, do you see any problems with regard to the lack of a shipping list in connection with the disenfranchisement of union members and their votes?

MR. SCHWARTZ: I have instructed the witness not to answer.

MR. DANAS: On what grounds?

MR. SCHWARTZ: Number one, I object to the form of the question and number two, there isn't a single allegation contained in this complaint that in any way reflected that they should or shouldn't have ship's lists or the wisdom of having it or not having it.

MR. DANAS: Let the record reflect that counsel is consulting, at thist point, with the witness.

2362a

Q Do you, in your capacity as secretary-treasurer, no where or could you find out where members of the union are employe at this point in time?

A Not at any point in time.

Q Can you find it out at any time?

MR. SCHWARTZ: Let me close anything like this off. I am perfectly willing at some point, if you want to come back to this, if you bring this before Judge Motley and we can see if she thinks this is relevant.

MR. DANAS: I think it's relevant and I think we have some latitude with regard to this examination.

MR. SCHWARTZ: I absolutely agree with you that you have all the latitude in the world with regard to issues set forth in the complaint and answers to the interrogatores. If it is not there, you don't have any latitude.

MR. DANAS: Let me state for the record with regard to the complaint in this action, we have alleged in paragraph 9, subdivision 2, that "Section 4013 of the Act, 29USC, 481 (c), in that defendant failed to comply with all reasonable requests of candidates to distribute by mail or otherwise at the candidates' expense, campaign literature in aide of such persons' candidacy."

There were requests made by some of the

complainants in this action that members aboard ships be mailed this information and that they be provided with a mailing list of the members aboard ship and if not, at least the union should mail it to the ships. There was the denial of that.

Now we have no idea at this point as to whether the defense will be that such lists exist but there was no duty to provide such list or such list didn't exist.

In any event, we certainly are entitled to find out this information.

MR. SCHWARTZ: This was specifically asked, what was meant by that paragraph? Take a look at your answers to the interrogatories with regard to that and tell me if you said that. If you said that, then I stand corrected. If you didn't answer it in the interrogatories I am not going to permit you to get into it now, not beyond what you possibly have. You can check the interrogatories.

MR. DANAS: The interrogatories may be updated and corrected from time to time as you well know. There's certainly no binding in terms of legal issues by interrogatories. As a matter of fact, I don't think there was any duty on the department's part to set forth legal

theories in interrogatories at all.

MR. SCHWARTZ: This is just a plain, factual statement, as toanybody asked about a ship's list and they were denied it.

MR. DANAS: There is a legal conclusion with regard to the relevancy and lack of relevancy with regard to the factual allegations involved, that certainly defense at this point cannot claim surprise. They have been aware from the start that ship's lists were requested by a number of the complainants, their own files and record will reflect the receipt of such requests. I am prefacing this question.

MR. SCHWARTZ: I wasn't present when O'Hanlon and Berry testified. Mr. Berry is here.

MR. DANAS: Mr. O'Hanlon is present.

MR. SCHWARTZ: You weren't present either. I will accept from Mr. O'Hanlon, whether he ver said anythin with regard to this.

MR. DANAS: Let me just say this:

Mr. O'Hanlon's deposition has merely been adjourned.

MR. SCHWARTZ: I'm trying to work it out. If you don't want to, then you will have to make your application to Judge Motley.

MR. DANAS: I would like to go into this area.

MR. SCHWARTZ: I want to work it out on the basis of what I am saying. The mere fact that you have a general allegation in your complaint which has been followed by interrogatories and deposition of the two top investigators and if there hasn't been anything siad and it is your claim there is something about a ship's list that was wrong with this election, I don't hink you are entitled to it.

MR. DANAS: Are you claiming that the officers of the union were never aware that such requests for ship's lists were made by the various candidates?

MR. SCHWARTZ: I don't think it matters.

MR. DANAS: I think it does matter. You are not claiming surprise, this discovery? You can move at the trial.

MR. SCHWARTZ: I have some things that I haven't gotten, we'll get that straightened out with the Judge.

Q You stated as of now, Captain, no such ship's lists are kept, is that correct?

A No. Nc ship's lists on members are kept, no.

Q .. If a major situation were to arise within the

union, how would members at sea be contacted currently?

MR. SCHWARTZ: I have instructed the witness not to answer.

Q Are there in existence any provisions in such major situations to contact the members of the union while at sea?

MR. SCHWARTZ: Same instruction. Please don't answer.

Q Are the members of your union in the possessio of any knowledge with regard to what procedures, if any, might be utilized by the union to contact them while they are at sea?

MR. SCHWARTZ: Same instruction.

Q In your tenure as secretary-treasurer of the union, ofthe International, have you received any requests or inquiries from members of the union as to how or in what manner they might be contacted while at sea should the need arise?

MR. SCHWARTZ: It's the same area. I have foreclosed it. There's a legal way of resolving this thing. I am perfectly willing to do that. It doesn't serve any purpose by just asking the same questions.

MR. DANAS: Are you directing him not to answer the last question?

MR. SCHWARTZ: Sure.

Q In 1971, subsequent to April of that year, did you in your capacity of secretary-treasurer, receive any requests from any candidates for International or local offices in the 1971 election for the provision of a ship's list to them?

MR. SCHWARTZ: Same instruction.

Q Do you know whether the union received any such requests, any officers of the union?

MR. SCHWARTZ: Can we move on to something else? I know there are many different ways of asking the question.

MR. DANAS: These are different questions.

MR. SCHWARTZ: I know. They are all in the same area.

MR. DANAS: If we are going to have to go before the Judge, I will know what we are talking about.

MR. SCHWARTZ: I'm just going to indicate that I think that area has been closed. If she says the area i open, well, all right, then you can ask a whole batch of questions.

MR. DANAS: I still would like to get them on the reocrd.

MR. SCHWARTZ: Okay.

Q Captain, in addition to its use in connection with elections, i.e., the sending out of ballots, what other uses are the mailing lists maintained by the International put to during the course of a year?

A The mailing list? For correspondence.

Q What types of correspondence?

A If we want to write to a man, we look in the mailing list and see what his address is.

Q What types of correspondence does the International office as a general ongoing matter send out to members?

A Matters of general membership interest. If a man asks a question or writes from a ship, we customarily send a copy to his home and a copy back to him on the ship, if we know he's on the ship.

Q How would you know he was on the ship?

A Because he wrote from the ship. If I get a letter from Russia, he must be in Russia, not home.

Q There are mailings throughout the year that are general mailings not pursuant to any requests?

A That's correct.

Q What types of documents or mailings are included, in general, within those general mailings?

A Newspaper or general membership letters.

Q What newspaper do you refer to?

A The Master, Mate and Pilot.

Q Is that an International publication?

A Yes.

Q How often is that mailed out to members?

A We try to mail it monthly.

Q Have you been successful in that attempt; do you mail it monthly?

A No, because I'm always acting as the editor, too.

Q Is that pursuant to the constitution, the secretary-treasurer shall be the editor of the newspaper?

A No, because we have no money to hire one, so everyone turns to.

Q Take the last 12-month period. How often has the newspaper been prepared, published and sent out?

A In the last 12-month period, I'd say that there have been approximately -- I may be wrong by one -- six or seven issues of the newspaper sent out.

Q What about the year before this?

A A year before --

Q Between mid-1972 and mid-1973.

A Mid-1972, I think we started to put the newspaper out on a regular basis in 1973, around March.

Q When did you become or when were you appointed editor of the Master, Mate and Pilot newspaper?

MR. SCHWARTZ: I'll be darned if I understand this. You have a complaint with about six or eight different specific items. I think you have touched on two. This has been kind of a general discussion of how the union works. I could understand that maybe for a little while, when you start and a little while when you end up. When are we going to get into some items on the complaint?

MR. DANAS: I think we have and I think we will.

MR. SCHWARTZ: What's the difference as to how often the newspaper came out in this past year?

Q Will you tell me when you became editor of the newspaper?

MR. SCHWARTZ: You just can't ignore these things. I'm going to stop this and I will go to Judge Motley myself and I will ask that this matter be handled by the Magistrate, because when we agreed to a trial date everybody was trying to get one. If you're going to continue to make this just a general inquiry as to how the union works, I'm going to have to insist that we stop and we get somebody to oversee the deposition.

MR. DANAS: I don't think we are doing that

at all. We have held out all days, next week, this week and last week for the conduct of deposition.

MR. SCHWARTZ: Tell me what the relevance is to this case as to how often the newspaper came out in this past year? You can't. You sit there and say it's relevant.

MR. DANAS: I am entitled to the background information. I tell you I will finish the deposition in due course, quickly.

MR. SCHWARTZ: That's not good enough.

MR. DANAS: Then make a specific objection.

MR. SCHWARTZ: I don't think there's any relevance. Let's get on to something that is relevant.

MR. DANAS: Let me conduct my examination.

MR. SCHWARTZ: I've let you ask questions that I don't see the relevance to.

MR. DANAS: If you have any specific objections you can make them.

MR. SCHWARTZ: You have a great deal of leeway, but it has to be in such a way that is permitted by the rules. It has to be with regard to this case.

MR. DANAS: If it is irrelevant, then you can object on that ground.

Q Will you tell me when you became editor for th

newspaper?

A I never really became editor. The editor is the president.

Q When did you assume your active duties with regard to the newspaper?

A To the best of my recollection, about the end of the first quarter of '73.

Q During the term that you assumed your active duties, did Masters, Mates and Pilots ever come out in magazine form?

A No.

Q During 1972, do you know whether it ever came out in magazine form?

A I don't know. I can't remember.

Q Do you recall whether the magazine ever came out in magazine form?

A Yes

Q When was that?

A 1971.

Q Is that the August, 1971 issue?

A I don't know the date. I think it may be.

Q I show you what has been marked Exhibit B for identification at yesterday's deposition. I think we can use the same designation. It is a copy of Masters,

Mates and Pilots Magazine, dated August, 1971, and ask you whether this is the magazine you were referring to with regard to your recollection?

A Yes.

Q Do you recall seeing Masters, Mates and Pilots in the magazine form in issue besdies this one?

A I think there was one other issue.

Q Do you recall the approximate date?

A I don't recall whether it was before this one or after that one.

Q Now, you have mentioned your duties as secretary-treasurer with regard to the mailing lists and the certification of voters and candidates; what other duties, if any, did you have with regard to the 1971 election?

A None.

Q At the 1971 convention, an international ballotting committee was chosen; was it not?

A Yes-

Q Now, subsequent to that convention do you know for the first time when that ballot committee met?

A No.

Q Do you know if it met at all after the convention?

A It must have met, but I don't know.

Q Did you have any contact with the ballot committee subsequent to the convention?

A Yes.

Q In what manner?

A The day before the ballots were counted.

Q That would be in December of '71?

A Yes.

Q What about prior to that?

A None.

Q Did the ballot committee ever contact you with regard to obtaining information from the international?

A Not to my recollection.

Q Now, once the mailing list that you referred to was updated in the manner that you have described, to whom did you forward that list in connection with the 1971 election?

A I didn't forward it to anybody.

Q What did you do with it?

A I didn't do anything with it.

Q Was a copy of that list ever forwarded to the Triple A American Arbitration Association?

A If ballots were mailed, it must have been.

Q By whom at the International was such list

forwarded?

A By some members of the staff.

Q Which members?

A Probably --

MR. SCHWARTZ: Only what you know, don't speculate.

THE WITNESS: I don't know who.

Q Were these employees who acted under your direction and control?

A They were employees.

Q Did they act under your direction and control?

MR. SCHWARTZ: Talking about these instances, not generally.

A No, they had not acted under my direction and control.

Q Whose direction and control were they acting under?

A I don't know.

Q Well, as secretary-treasurer of the International, are you not in substance the custodian of this mailing list?

A Yes.

Q And I gather you were custodian of the list

back in August of '71?

A Yes.

Q And in September of '71?

A Yes.

Q Now, are you testifying here today that these lists left the office, whether it be to the AA or anywhere else, without your knowledge or say-so?

A That's what I'm testifying, yes.

Q You must have some recollection as to who overrode your balliwick, so to speak.

MR. SCHWARTZ: I object to the form of the question.

Q Do you have any knowledge as to who did forward that list?

A No.

Q Would your records indicate who forwarded that list to the AAA?

A I don't know.

Q Would you check those records?

A Well --

Q In August of '71, approximately how many names were on that membership role?

A Which membership role?

Q The one that you have been describing, that

you updated, emanated from the locals.

A Approximately 8,500.

Q Now, is it conceivable that a list of 8,500 names left the International office without any records having been kept?

A No.

Q There are records in existence which would reflect when --

A I assume so.

Q In August of 1971, besides yourself, which officers of the International were working out of the New York office at 39 Broadway?

A Captain O'Callghan.

Q Who else?

A No other officers.

Q Now, besides yourself and Captain O'Callghan, whom did you employ in terms of an office staff in August of '71?

A Approximately eight people.

Q Would you name them, please?

A There was a Mr. Kenneth Camisa, who was director of research; two secretaries, that worked with him, I don't remember what their names were, they are boating; the officer manager who is a Mrs. Vera Watson;

the controller, Harry Seidman and two girls that worked for him. How many is that? And I'm not certain whether we had a receptionist at that time or not.

Q Are all of these people still at the union headquarters, 39 Broadway?

A The people who are there now, are Mrs. Watson, Mr. Seidman and the two girls that work with Mr. Seidman.

Q Now, I gather the International still maintains a list of members, computerized?

A Yes.

Q Under whose control is that list currently?

A The controller.

Q Is that a change since 1971?

A No. The controller maintains physical ownership of the list, although the bylaws and the constitution say that I am supposed to control them it is assigned to him.

Q So you still, in effect, have custoday of that list?

A Yes.

MR. SCHWARTZ: I object to the form of the question. I don't what that means; "You still, in effect, have custody."

If you are asking if it stays his responsibilit

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the answer is yes.

Q Could the controller ship that list out of the office without your approval?

A Yes.

Q For any purpose?

A I don't understand what you mean by "any purpose."

Q Well, are there situations in which he would have to get your approval before shipping the list out of the office?

A Yes.

Q And was that true in 1971?

MR. SCHWARTZ: When in'71?

Q August of '71.

A Yes.

Q Now, in August of '71, do you recall whether your office -- whether you personally or one under your direction and control forwarded the union's list of members to the International ballot committee?

MR. SCHWARTZ: I'm sorry, will you say that again?

MR. DANAS: Read back the question.

(The pending question was read back by the reporter.)

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MR. SCHWARTZ: I object to the form of the question. You got three things in there. You asked him whether he did or somebody under his control.

Q Do you know whether the International ballot committee ever received a list from the International's offices of the International's members?

A No, I don't.

Q Would the union's records reflect whether the International ballot committee were provided with such a list?

A Yes, they would.

Q Will you undertake to check the records?

A Yes, we will.

Q With regard to the 1971 election, do you recall when the last attempt to update the mailing list that was made prior to its delivery either to AAA or to the International ballot committee?

A No, I don't.

Q Do you recall whether any such attempts were made subsequent to the convention in Galvaston?

A No, I don't.

Q Would your records reflect that?

A Yes, they would.

Q Will you undertake to check the records for

that?

A Yes, we will.

MR. SCHWARTZ: Let me make a note of that. What you want to know is: The updating between the end of the Galvaston convention and when?

MR. DANAS: And the time that the list was sent either to the AAA or the International ballot committee or both.

MR. SCHWARTZ: Check records to see when the list was updated between the Galvaston convention and time it was furnished to the American Arbitration Association and/or ballot committee.

Q Now, just to be certain we have this straight:

Do you recall whether the International was in contact with you as secretary-treasurer at any time subsequent to their having been chosen in July of 1971, up to the date that you have mentioned before, which was the date before the counting of the ballots?

A No, I don't recall.

Q Do you recall whether they made any requests of you with regard to questions -- questionable persons on the mailing lists?

A No, I don't recall.

Q Would you check your records to see if any

correspondence exists between the International ballot committee and yourself and provide us with copies of those correspondence?

A Yes, we will.

Q If any.

A Yes.

Q Did you, in your capacity as secretary-treasurer, have any control over when the ballot committee actually mailed out ballots for the election?

A No.

Q Were you consulted by the ballot committee in that regard?

A No.

Q Was anyone at your office or in the International office so consulted?

A I don't know.

Q Would the records reflect whether there was any consultation?

A If they are written, it would.

Q Would you check to see whether such correspondence existed?

A Yes.

Q Now, before you referred to the normal and annual mailings to members of information, etc. Approximately how much or many pieces of correspondence are

mailed to the membership as a group per year?

A It's impossible to give an estimate. If there is nothing to relate to the membership, nothing is mailed in that year. If there is a referendum, then obviously something is mailed. You spoke of information correspondence?

Q Yes. This would be in addition to the newspaper.

A That's right.

Q When the newspaper is printed, how exactly is it sent out, physically, who wraps them, who addresses the, where do they emanate from?

A An independent mailing service chosen by the printer who prints it.

Q Is the independent mailing service provided with a membership list?

A They are provided with a mailing list, yes.

Q Now, in or about August of 1971, did you, in your capacity as secretary-treasurer, receive any requests from candidates, whether at the International or local levels in the 1971 election to be provided with copies of that mailing list then in existence?

A I don't remember.

Q Do you recall receiving any such request from

Captain Sheldon?

A I don't remeber. I may have, I don't know. We can search the records and check it for you.

Q Do you recall receiving any such request from Mr. Koonce, Captain Koonce?

A Mr. Koonce.

Q Mr. Koonce.

A Again, I don't recall.

Q All right. Would you check your records and provide us with copies of any requests received from any candidate at the International or local level for a copy of the mailing list?

MR. SCHWARTZ: Incidentally, hasn't all this already been furnished to you? I think you got this. Didn't I give you all that?

MR. DANAS: We don't know exactly the extent of what we have.

MR. SCHWARTZ: This one happens to stick out in my mind, because I remember there was a great deal of discussion between the Department and myself before the complaint was filed. I know there were several letters that were referred to and things of that sort. All right We will look.

Q Now, in or about August, September, of 1971,

do you recall the International having promulgated a rule to the effect that the mailing list of the union membership was to be kept only at the New York office and not at the regional port office; do you recall that?

A No, I don't recall that.

Q What is your best recollection with regard to the existence or location of the membership of the International's members, besides the one that was present at the International office at 39 Broadway?

A The membership list now?

Q In August, September, of '71.

A In August, September of '71, the ballots were mailed, the AAA must have had a mailing list.

Q I'm referring to its existence at any local office of one of the union's locals, do you recall whether that list existed at any of those local offices?

A No, it did not.

Q Do you recall whether any local mailing lists exist at any local union offices?

A I couldn't have knowledge of that.

Q Are there any records that your office keeps which would reflect whether local mailing lists were in existence?

A No, there are no records we keep that would

reflect that.

Q Was it your testimony that you don't recall any requirement that the list be kept, that the general list of members be kept only in New York?

A You said that negatively. Say it again?

Q What is your recollection with regard to any promulgation from the International that the general list be kept only in New York at the International's office?

A The only place where there is a mailing list in this union that reflects this is in New York at the International office.

Q Did you, in your capacity as secretary-treasurer, ever receive any requests or did the International office ever receive any requests from local officers for them to have a copy of the general mailing list of the union?

A Yes.

Q Do you recall which locals made such requests?

A No.

MR. SCHWARTZ: What period of time is this?

MR. DANAS: August, September, 1971.

THE WITNESS: I'm not speaking of August, September. Youdidn't put a time frame on it.

Q What date are you speaking of?

A Three years.

Q At any time between the convention in Galvas-
ton and the December 23, 1971, did you, as secretary-
treasurer, ever receive such request from any local
union officials?

A Possibly.

Q Would you check your records on that?

A I'll check my records, but I tell you now ther
was nothing ever written, always verbal.

Q By the way, do you keep logs at the union
office of phone calls?

A No.

Q Do you keep a diary of phone calls?

A No.

Q Are there any records reflecting phone calls
received?

A No.

Q Do you recall what your response was with
regard to those inquiries?

A Yes.

Q What was your response?

A "No."

Q What was the reason for your negative response

A The reason was that there is only one general membership list and we keep it in New York; no one else gets it.

Q What is the rationale behind that?

A The-rationale is the names and addresses of its members. We don't distribute them to 26 port offices, because that is the way mailing lists disappear. They are kept only in New York.

Q And by your independent mailing service?

A No, they are provided with a set of labels at the time they mail.

Q So they don't get the lsit?

A They don't get a list. They get mailing labels, that's all.

Q Prepared by you?

A No.

Q Prepared by whom?

A By a computer service.

Q Does the computer service have the mailing lists from which to make up the lables?

A They have the master tape; they don't have the mailing list.

Q The tape contains the mailing list?

A Yes.

(Whereupon, a brief recess was taken.)

Q Captain, getting back to what we were discussing before with regard to the individual ports under the current set, I'd just like to ask one or two other questions in that regard.

Does a member who is affiliated or in some way working out of the port of Baltimore, for instance, as a member of the port of Baltimore, does he have a card or any affiliation with that membership at all?

A No.

Q What is it; that designates him as a member of theport of Baltimore?

A Nothing.

Q If someone were to go up to the port of Baltimore and say, "I'm John Jones from Baltimore," what does that mean?

A Nothing.

Q Do these port groups have regular meetings?

A Yes, we have a provision for meetings ever month.

Q Who can attend those meetings?

A MEmbers who may be registered in that port, at that time.

Q If John Jones says he is from the port of

Baltimore, then he is registered in Baltimore.

MR. SCHWARTZ: That's one of the possible meanings, I suppose. The form of the question -- who knows what he means. I suppose that is a meaning.

Q Who is eligible to attend these meetings?

A Any member in good standing of the Master, Mate and Pilot.

Q So if there is a regular meeting in Baltimore and someone who works in Galvaston, who happens to be in Baltimore on vacation can drop in?

A Yes.

Q Can he vote if there is a vote being taken?

A Yes.

Q Can he speak?

A Absolutely.

Q Does he have a right to review the local's records?

A There are no local's records. The shipping records are posted on the boards in every port.

MR. SCHWARTZ: What are we talking about; today, currently?

MR. DANAS: Yes.

Q Is a meeting at the Baltimore port office open to a member of the Pilot Division?

A As an observer.

Q How about as a participant, and to speak, vote?

A Unless the membership wants him to speak.

Q What about inland members?

A The same situation applies.

Q And is the reverse true of pilot meetings, and offshore members can attend as an observer, etc.?

A If he is invited, yes.

Q Now, in 1971, you were, as you mentioned before, a candidate for reelection as a secretary-treasurer.

Did you do any campaigning?

A None .

Q None at all?

A Absolutely none.

Q Did you send out any campaign literature?

A Not personally, no.

Q What does that mean?

A Just what I said. I said I did not campaign for election and I had nothing to insure my election. I don't think anything can be clearer than that.

Q I think it can be.

Did you order any campaign literature at your

expense?

A No.

Q Did you contribute to the printing of any campaign literature that someone else ordered?

A To the best of my recollection, no.

Q Are there records that would refresh your recollection as to whether you made any such contributions?

A No, there are none.

Q Cancelled checks?

A (Witness shakes head.)

Q Whether you contributed or not, do you recall whether any campaign literature was in fact sent out on your behalf?

A I don't recall.

Q What if anything would refresh your recollection on that score?

A If it saw it it might refresh my recollection.

MR. SCHWARTZ: We will check on campaign literature. We will talk to O'Callaghan and talk to Caldwell and anybody else and see if he remembers anything being sent out. Okay.

Q With regard to the 1971 election, were you a

willing candidate?

A I was probably the most reluctant candidate in the entire election. I had not wanted to run.

Q May I ask you why not?

A I didn't want to be the secretary-treasurer. I was very happy sailing on a ship.

Q Are you stil unhappy in your capacity?

A I still would like to go back to sea, yes.

Q I gather that you are not planning to seek reelection in this year's election.

A I didn't say that. I'm here because I have been asked to do a job, and that's what I am doing.

Q Who made such requests to you?

A A number of the officials in the membership.

Q Are you referring to a request in 1971?

A Yes.

Q Captain O'Callghan made such request?

A Captain O'Callghan was one.

Q Captain Caldwell?

Captain Caldwell, yes.

Q How about any members of the International ballot committee; did they make such requests prior to the formulation of that committee?

A I don't know. I can't even remember who was

on the International ballot committee.

Q Captains Valensi, Mitchell, Reynolds, Eisenhower and Nelson.

A I think the only one I had ever met before the convention was Captain Nelson.

Q Was he one of those who made a request for you to run?

A No. Captain Nelson took no interest in the election.

Q You know that for a fact?

A Yes. He was retiring. He didn't care who was elected.

Q How about a fellow down in Baltimore, Moe Weinstein, do you know him?

A Yes.

Q Do you know him from your old Local 14 days?

A Yes, I met him twice in my life before I came to this job.

Q Did he make that request to you to serve?

A Yes.

Q What was his position back in 1971, with the local, if any?

A He was the president of Inland 14, which was still a local in those days and he was the port agent of th

offshore division, port of Baltimore.

Q Prior to December of 1970, had you yourself been active -- not as a candidate, but active -- in union affairs?

A No, never.

Q Did you consider yourself informed as to union affairs prior to 1970?

A No.

Q At the time that you assumed this secretary-treasurer's spot in April of '71, did you consider yourself to be informed with regard to International's affairs

A Very poorly.

Q How soon after April of '71 did you consider yourself to be less poorly informed or fairly well informed?

A I don't today consider myself that well informed.

Q You pushed for the ILA affiliation?

A Not originally.

Q What does that mean?

A Just what I said.

Q What do you mean "originally"?

Q When it was first proposed, I was against it.

Q When was it first proposed?

A I think it was, as I remember, in the same time I was elected as secretary-treasurer. By the general executive board.

Q That was April of '71, when it was first proposed.

A I seem to remember that then. I may be wrong.

Q You were against it then?

A Yes.

Q But you spoke for it at the convention?

A I don't think I even spoke at the convention on the ILA affiliation.

Q When formally or informally?

A It's easy to check the convention records.

Q Do you recall what your views were on affiliation as of the convention date?

A As of the convention date, I was for affiliation.

Q What is it that occurred between April and Jul of '71 that changed your views?

A I don't think it's anything that occurred between April and July. It was a review of the cumulative problems we were having.

Q Did you as a candidate for reelection care

whether the referendum on affiliation were put to the members at or about the time of the officers' elections?

A As a candidate for reelection, no.

Q In any capacity, did you care or have any views?

A Yes.

Q What were those views?

A I thought that from a purely -- and put them in quotes -- "political standpoint," it was probably the worst thing that could go out on a referendum prior to a ballot for election of officers.

Q Did you make those feelings known to Captain O'Callghan?

A Yes.

Q In what manner?

A Verbally.

Q You recall that clearly?

A No.

Q You do have a recollection of it?

A I have a recollection.

MR. SCHWARTZ: Excuse me a minute --

MR. DANAS: Let the record reflect discussion between counsel and the deponent.

Q Subsequent to the election, it is your

testimony that you yourself did no electionneering whatsoever?

A Subsequent to the election?

Q Susbsequent to the convention, I'm sorry.

A To the best of my recollection, no.

Q Do you recall whether you supported any candidates?

A Yes, I supported people who were running.

Q In what manner did you make your support known to the membership?

A I didn't, I supported them personally, just to myself.

Q As a rooting interest?

A As a rooting interest, correct.

Q Do you know if your name was used in any literature supporting any other candidates?

A I don't know.

Q Do you know whether you were included in any slate of candidates?

A Yes, I was included in a slate.

Q What was the slate that you were included on; what did it consist of?

A Captain O'Callghan and Captain Caldwell.

Q Was there an opposition slate?

A Yes, there was.

Q What did that slate consist of?

A Captain Sheldon for International President, I think a Captain Vance for executive vice president; I cannot remember the fellow against me, that's how interested I was.

Q Was it Koonce?

A A Mr. Koonce was on the Sheldon slate for executive vice president.

Q He was your opponent?

A No, he was not .

MR. SCHWARTZ: Charlie Norstrand?

THE WITNESS: Charlie Norstrand was one of my opponents, yes.

Q Do you recall whether you had any opponent besides Norstrand?

A Captain Balser.

Q What local had he been affiliated with?

A I don't have the slightest idea.

Q Did you know him prior to the election?

A No.

Q Ever heard his name?

A Never. Yes, I beg your pardon, I have heard his name.

Q In what connection?

A He was the skipper on the Italia.

Q Was he what we would refer to as a dark horse candidate in the '71 election?

A I would say that he was a candidate out of personal pique.

Q At what?

A At me.

Q Is there any particular incident that caused that pique?

A Yes.

(Discussion off the record.)

Q Now, you mentioned the O'Callghan slate of which you were a part and that was at the International level, I assume?

A Yes.

Q Did that slate affiliate itself in any way wit candidates at local level elections?

A Yes, it did.

Q In what way were those affiliations made?

A The mutual support by the locals for the International officers who were running.

Q When you say mutual support, what do you mean?

A I mean that Captain O'Callghan wanted certain

port agents to be elected to assist him in moving the union forward and certain port agents were supporting the International officers who were up for election to do the same thing.

Q In what way were -- was your slate at the International level supporting these local candidates, how?

A I don't know how. When I say I don't know how, that means I don't know personally. I think most of the support came from the other direction. They identified with the International officers.

Q Do you recall any local officers or local candidates requesting whether they could identify with it -- with your slate?

A No, I don't. I'm sure they did, though.

Q I'd like you to check your records to ascertain whether any such requests were received by members of your slate and what the responses were.

A Yes.

Q If any.

A Yes

MR. SCHWARTZ: Okay, we will check that.

Q Now, is it your testimony that you have no recollection as to what personal funds of your own were expended for that campaign?

212a

A Yes, that is my testimony.

MR. SCHWARTZ: That's what he said.

Q Just to be certain:

Do you have any recollection as to whether any such funds were expended?

A I don't recall.

Q Do you recall whether Captain O'Callghan expended any funds for his candidacy?

A I don't know.

Q Now, Exhibit B for identification, that Master Mate and Pilot magazine that we looked at earlier, which was the August, '71 issue. Do you recall when in your tenure as secretary-treasurer, prior to August of '71, there were any issues of Master, Mate and Pilot printed and distributed?

A I'm not certain. I think there was a spring. There was either a spring issue or winter issue. One ahead or one behind that issue; I don't know which.

MR. DANAS: I'd like to know whether any issues of Master, Mate and Pilot were prepared and mailed to the membership prior to the August 1971 issue.

MR. SCHWARTZ: Okay.

Q Now, in Exhibit B for identification, there's an article regarding yourself, is there not, to

some extent introducting you to the membership?

A There may be. I haven't seen that for two years. I see my name on one page there.

Q I direct your attention to page 13 of Exhibit B for identification and ask you whether this page contains a short biography of yourself?

A Yes.

Q Does that appear to be in the nature of introducing you to the union membership?

A It would appear to be, yes.

Q Do you recall the circumstances of the preparation of that biography?

A No.

Q Do you recall being interviewed by anyone to ascertain that information about you?

A I believe when I came, we sent a notice out that contained much the same information. Let's see -- this is the information -- the information contained in here is much that was sent out originally, as a notification to the ports.

Q Who was that sent out by and when?

A I think it was sent out by Captain O'Callghan

Q When was that sent out?

A Early '71.

Q And now, directing your attention to pages 20 and 21 of Exhibit B, I'd like to ask you whether those pages contain an extended statement of yours on S699?

A Yes, it does. It's a very good statement, too. It got the bill passed.

Q What type of bill was it?

A This was the radio-telephone bill.

Q Very precisely, to do what?

A It had to be with the interrelationship of communication on the VHF radio telephones on bridge to bridge operations.

Q Is that a safety type measure?

A Yes.

Q How did such safety bill come withint your jurisdiction as secretary-treasurer of the International?

A Well, I wear many hats and since I was the single individual in the union who had most recently been sailing and I probably sailed as master more than any other officials in the union, as well as members, they felt I was qualified to give the statement.

Q Who is "they"?

A Captain O'Callghan.

Q Approximately when did your involvement in S691 begin?

A Oh, in January.

Q Of what year?

A Of 1971.

Q By the way, is secretary-treasurer of the International a full time position?

A Yes, it is.

Q Salaried?

A Yes, it is.

Q Expense accounts?

A Expense allowance.

Q Do you currently work out of the New York office?

A Yes.

Q You stated you live in California?

A That's correct.

Q How does that work?

A IT doesn't.

Q How has it worked?

A Very poorly.

Q Give me specifics, if you would.

A Just what I said, very poorly.

Q How many days a year are you in New York?

A Oh, I'd say --

MR. SCHWARTZ: Hold on. We're now back into

your -- I appreciate your interest. We are now back in the present?

MR. DANAS: We are entitled to know who runs the union and from where.

MR. SCHWARTZ: I don't know if you are or not. These are personal questions as to what he does.

MR. DANAS: He's the secretary-treasurer of the International.

MR. SCHWARTZ: His headquarters are here.

MR. DANAS: I don't know whether he lives here or in California. I want to know how often he is here in New York City, at the union headquarters now.

MR. SCHWARTZ: I don't see what the relevance of that is.

MR. DANAS: Are you directing him not to answer?

MR. SCHWARTZ: Yes, not to answer. You have plenty of questions to ask about the case.

Q Are there any other International offices currently, besides the one at 39 Broadway?

A Yes.

Q Where are they located?

A San Francisco.

Q Do you work out of the San Francisco office

at all?

A Occasionally.

Q Who is the officer actually in charge of running the New York office, currently?

A Me.

Q Who is the officer in charge of the San Francisco office?

A Captain Caldwell.

Q What about Captain O'Callghan?

A Captain Caldwell works under Captain O'Callghan's direction. He is responsible directly to him.

Q You also?

A I'm responsible to Captain O'Callghan also, yes; in accordance with our constitution.

Q On a day that a piece of business comes into the New York office and you are not present and Captain O'Callghan isn't present, who is at that point in charge of the office?

A What kind of business?

Q Any type of business that you, if present, would concern yourself with. A piece of financial business; a lease coming in to be reviewed; whatever.

A If it's a financial thing, the controller takes it. If it's a lease, the controller might take it

and hold it for me.

Q What if it's an inquiry on the constitution of the union?

A It sits there until someone answers it.

Q Now, in August of 1971, you stated you were living in New York, IN Yonkers?

A I was domiciled in Yonkers.

Q Were you at the union office at 39 Broadway on a daily basis then?

A No.

Q Where else were you in August of '71?

A Puerto Rico.

Q Is there an International office down there?

A No.

Q What were you doing in Puerto Rico in August of '71?

A I was conducting a picket operation on a runway ship.

Q What about September of '71 ?

A Most of September, also.

Q What about October and November of '71?

A October I was probably in New York, more than not.

Q And November?

A November, probably so.

Q And December?

A December, yes. I'd have to check my diary to see where I was.

Q Now, in August and September when you were down there in Puerto Rico, was Captain O'Callghan in New York, at the New York office?

A I don't know.

Q Would the records of your office reflect his presence?

A Yes.

Q Would you check that?

A Yes.

Q Let us know whether he was in New York in August and September of '71.

A Yes.

Q As of August and September of '71, in your absence and in Captain O'Callghan's absence, who was in charge of the International office on a day-to-day basis?

A Nobody.

Q Nobody?

A In charge for what purpose?

Q You had two fairly extensive union-wide elections going on, I assume there were questions that

arose periodically with regard to membership eligibility to vote, to run for office, etc. Now, who would handle those inquiries in the absence of both of you gentlemen?

A Probably one of the staff.

Q Now, of the staff that you referred to earlier, which of them -- which one was senior most in terms of authority?

A There was a dispute at the time as to the seniority. That is a private joke.

Q Who did you regard as being senior between the two disputing parties?

A I'd rather not say.

Q Give me the two names.

A Mr. Watson, who is the executive secretary and office manager and Mr. Camisa, who was the director of research.

Q What exactly is a director of research?

A A director of research was everything. He would evalucate contract proposals, assist with the admini tration of the office; he was a pension expert, a welfare plan expert; write composition papers on different items that had to do with the job opportunities in the union and in the industry.

Q That was a full time position?

A Yes.

Q Was he formerly a master of a ship?

A No.

Q Do you recall during August or September of 1971, whether the International ballot committee ever met up at the office at 39 Broadway?

A I don't recall.

Q Would any records reflect whether they conducted such meetings up at the offices?

A Yes.

Q Will you check those records?

A Yes, we will.

MR. SCHWARTZ: You got those, I'm sure, because those are the minutes of the ballot committee.

Q Did the ballot committee, to your knowledge, do any independent checking or updating with regard to the list of members that was provided either directly to them or to the Triple A?

A Any independent checking?

Q Yes, of their own.

A The ballot committee, at the time I met with them, checked --

MR. SCHWARTZ: Talking about in August.

THE WITNESS: In August, oh. No, not that I

know of. They may very well have.

Q So that as far as you know they pretty much relied on the accuracy of the list as provided by the International?

A That's correct, as far as I know.

Q Now, as secretary-treasurer, were you involved at all in the mailing of campaign literature?

A No.

Q Were you consulted with regard to the set up of the mechanics of mailing out to literature for candidates?

A No.

Q Were you charged by the constitution with such duties?

A No.

Q What about the maintenance of the mailing list you're charged with the duties to maintain, to update the mailing list.

A My constitutional duties require the maintenance of a membership list.

Q Is there anything in the constitution as it existed in 1971 that precluded you from allowing the list to be maintained at any local office of the union?

A Not that I know of.

Q So as far as you know it was discretarionery?

A I think, and I'd have to refresh my recollection with the constitution, that the constitution states that a membership list shall be maintained in headquarters It speaks to no other membership lists and other boards and I may be in error on that.

Q If it does read that way, you don't recall any provision against the maintenance of the list concurrently at local offices of the union?

A Not -- as far as I know, it contains no specific provision.

Q So that when you receive requests from local offices and you denied such requests, you were not operating under any direct provision of the constitution as it then existed, is that correct?

A The general membership lists are not provided to anyone.

MR. DANAS: Would you read back the question, please?

THE WITNESS: And I was not acting under any specific provision in the constitution.

Q How about the bylaws of the International?

MR. SCHWARTZ: Hold it. The International doesn't have bylaws. It is the International Constitution

of the Offshore Division Bylaws.

Q Is there anything in the then existing offshore division bylaws which prohibited the maintenance or the concurrent maintenance of a list at the local office?

A THe then existing offshore division bylaws are the same bylaws that are here now, with a couple of changes and referendums and I don't recall any specific prohibition.

Q By the way, do you recall whether the constitution mentioned maintenance of shipping lists at all?

A Yes, not -- I don't believe it's the constitution. I think it is the offshore division bylaws.

MR. SCHWARTZ: Are you sure you're saying it the way you want it to be, shipping lists? There's a shipping list and you've been talking about a ship list.

MR. DANAS: I'm referring to the ship list that we referred to earlier.

THE WITNESS: There's nothing in the constitution or bylaws that calls for the maintenance of a ship list.

Q What is the shipping list?

A The shipping list is a list of the names of members who are registered for employment in the various ports where we maintain hiring halls.

MR. SCHWARTZ: They are registered to ship, that's why it's called a shipping list.

Q Would those lists indicate at any given time where a member would be working or just that he was registered at that office?

A Those lists would indicate that he was registerest and physically present at an office.

MR. SCHWARTZ: Once he gets on a ship, he goes off the list. It's an employment list, that's what it is.

Q In August of 1971, were you aware of the existence of the constitutional requirement that ballots for election of officers be sent out within thirty days after the close of nominations?

A Yes.

Q Did you in your capacity as secretary-treasurer have any concern with seeing that that mandate was complied with?

A Yes.

Q What did you do in that regard?

A Nothing.

Q Approximately when in August of '71, did you become aware that the ballots wouldn't be sent out by August 28, '71?

MR. SCHWARTZ: I object to the form of the

question. That assumes he had become aware of it.

MR. DANAS: I thought he stated he had been aware.

Q Were you aware that there was a problem with regard to the thirty-day limitation?

A I was aware but I don't know how.

Q Approximately when did you become aware of that problem?

A I can't state when I was aware.

Q But it was some time before August 28th?

A It must have been.

Q And you did nothing -- you stated you did nothing to see that the constitution was fulfilled?

A That's right.

Q Do you know whether any officer of the International attempted to see that the constitutional requirement be fulfilled?

A No, I don't know.

Q Did you undertake to inform the International ballot committee of such thirty-day requirement?

A No, I didn't.

Q Did Captain O'Callghan?

A I don't know.

Q. In August of '71, were you concerned at all

with the thirty-day requirement and the fact thatit wouldn't be met?

A As I indicated before, I was vaguely concerned, yes.

Q What was the nature of that concern, as you recall it.

A It was a constitutional provision that ballots be mailed thirty days after the close of the nominations.

Q What was the result that you were concerned with if the thirty-day requirement were not met?

A I don't know. I wasn't that well educated in the affairs of the union at that time.

Q Do you recall whether you as secretary-treasurer sought any legal advice as to what the results might be?

A No.

Q Do you know whether Captain O'Callghan sought any advice?

A I don't know.

Q Do you recall whether anyone at the International office sought such advice?

A I don't know.

Q Would your records reflect whether any such

advice was sought?

A AGain, I don't know.

Q Would you check those records?

A Yes.

MR. SCHWARTZ: Just a minute.

Let me make a note for him. Whether anybody sought legal advice?

MR. DANAS: Yes.

Q Now, what were you duties as secretary-treasurer with regard to the ILA affiliation referendum?

A None.

Q What about the provision of an up-to-date mailing list?

A That would be provided by the controller, of course as the constitution says, I'm charged with it; but the day to day workings of it are done by the controller.

Q You were aware during that period that the conroller was providing a list, were you not?

A I was not.

Q Why not?

A I wasn't there.

Q The controller never contacted you down in Puerto Rico?

A I never spoke to the controller in Puerto Rico.

Q Did you speak to him from anywhere during August of '71?

A No.

Q There was an important referendum, obviously, outstanding; weren't you concerned at all that as secretary-treasurer you were to some extent abdicating your duties in that regard by your absence?

A If you put it in that way, it may be a fair statement on your part; but that's what you have competent people in the office for.

Q Who was the competent person in this regard?

A Mr. Seidman.

Q How long had he been with the International prior to 1971?

A I don't know.

Q Would you check your records and let us know that?

A Yes.

Q Subsequent to the convention in Galvaston, do you recall whether any candidates for International or local office requested of you or any other officers of the International an opportunity to inspect the maili

list at your offices?

A I don't recall.

Q Would your records reflect whether any such request was made?

MR. SCHWARTZ: You have asked that already and we will get it for you.

Q Would your records further reflect whether any such inspection was in fact accomplished?

A I doubt that; I don't know though.

Q As a matter of course, don't you keep a log of inspections of the list?

A We already indicated we don't keep a log like that.

Q We talked about phone calls. We are now talking about the opening up of that list that you referre to as being crucial for the union's existence. Is there a record kept of who has access to that list?

A Yes.

Q Your records would reflect whether any such inspection were accomplished by any candidates?

A Yes, possibly.

Q I would ask you to consult those records.

A If a candidate inspected the list, the records would reflect he had done so.

Q Okay. I would ask you to check the records and inform us as to whether any such inspections were accomplished by a candidate.

A At the International office?

Q Right.

Would your records reflect whether any such inspections were made by candidates at the Triple A?

A No.

Q Did you have any part in the decision with regard to chosing the firm that printed the ballots for the 1971 election?

A Nothing at all.

Q Did you have any part in determining the form of those ballots?

A No.

Q Who did?

A I don't know.

Q Who would, under the constitution?

A The ballot committee under the constitution prepares the ballot.

Q So then to the best of your knowledge it would have been the ballot committee?

A To the best of my knowledge, the ballot committee is the one that would have prepared it.

Q Now, do you know whether any literature was mailed out by the International with regard to the affiliation with the ILA referendum?

A Yes.

Q Did you have any active part in the preparation or mailing of that material?

A No.

Q Well, who could it have been?

MR. SCHWARTZ: I object to the form of the question.

Q Was it Captain O'Callghan?

A I don't know.

Q Do you recall whether Mr. Camisa had any part in the preparation of communications to the union membership?

A I don't recall.

Q Well, does he now?

A No.

Q Well, as of the current time, who prepares such communications to union members?

A What such communications?

Q Letters, informational bulletins, etc.

A I do.

Q You don't recall whether that was true in

1971?

A I recall very well. I said I had not had anything to do with it.

MR. DANAS: For the record, we are adjourning today's deposition at the request either of Mr. Schwartz or the deponent or both, to be continued on Wednesday, May 29th, at 2 p.m. or as soon thereafter as we can get together.

I have at this point, tentatively scheduled an argument for two o'clock.

MR. SCHWARTZ: Let me know.

MR. DANAS: I'll know the day before when we have an argument. What about Captain O'Callghan's deposition?

MR. SCHWARTZ: We will bring him back either Thursday or Friday.

MR. DANAS: That would be the 30th or 31st of May.

MR. SCHWARTZ: Also, you're going to go throug those statements?

MR. DANAS: Signed statements?

MR. SCHWARTZ: The other statement, not the signed statements.

(Time noted 3:40 p.m.)

Subscribed and sworn to before me this _____day of _____1974.

_____
ROBERT J. LOWEN

amv

C E R T I F I C A T E

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, ANTHONY MANCUSO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That ROBERT J. LOWEN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I Further certify that I am not related to any of the parties to this action, by blood or marriage, and that I am in no way interested in the outcome of this matter.

In WITNESS WHEREOF, I have hereunto set my hand this 11 day of June 1974.

ANTHONY MANCUSO

Deposition - Lowen dated May 29, 1974

U.S. DISTRICT COURT
FILED
JUN 14 1975
S.D. OF N.Y.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

James D. Hodgson, Secretary of Labor, U.S. Department of Labor,

Plaintiff,

-against-

72 Civ. 5031 CB''

International Organization of Masters, Mates and Pilots, international Maritime Division, ILA, AFL-CIO,

Defendants.

May 29, 1974
2:00 p.m.

Continued deposition of defendant, by ROBERT J. LOWEN, taken by the Plaintiff, pursuant to Notice dated June 2, 1973, taken at the United States Attorney's Office, Room 329, United States Court House, Foley Square, New York, New York, before Anthony Mancuso, a Notary Public of the State of New York.

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VOL #10

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115

APPEARANCES:

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Also Present:

Brian P. O'Hanlon,
United States Department of Labor,
Management Services Division

Theodore Gotch,
United States Department of Labor,
Solicitor's Office

- - -

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ROBERT J. LOWEN, having been previously duly sworn, resumed and testified further as follows:

EXAMINATION CONTINUED

BY MR. DANAS:

Q Captain, may I remind you that you are under oath.

A Yes.

MR. DANAS: Mr. Schwwartz, I would like to ask you whether we have any time limitations on this afternoon session?

MR.SCHWARTZ: 6 o'clock.

BY MR. DANAS:

Q Captain, previously we discussed the list of members.

A Yes.

Q Of the Masters, Mates and Pilots.

I believe you stated that at some point subsequent to the time you become secretary-treasurer, in April of 1971, the list of members became computerized, is that right?

A I said that it was in the process of being computerized. I think it was finalized, yes, after I become secretary-treasurer.

Q Do you recall when, for the first time, you received the first copy of the computerized list of members?

A No, I don't.

Q Can you tell me approximately when that would have been?

A We received the first one probably when we started computerizing, in January.

Q So, in other words, the first computerized list of members was received at the International office before you became secretary-treasurer; is that correct?

A I just couldn't say, it was too damn long ago.

Q Do you recall when you first initiated the computer process?

A No. It had been initiated by our auditors and staff.

Q Previously you also mentioned the updating procedures?

A Yes.

Q Were the computer, computerized lists updated as well?

A They were updated continually, yes.

Q So there was a computerized list of members in the International offices?

A Yes.

Q Were there any other forms of the membership list in the International offices in or about August of 1971?

A I think there were some old typed lists that were original that I think they worked from to get the computerized list.

Q They were in existence in August of 1971?

A I think so. I am not certain.

Q Do you recall whether there was a handwritten list of members?

A Handwritten? Not that I can recall.

Q Do you recall whether there was a membership file system, index cards for each member?

A There is a system that was installed with cards. We keep the address on, yes. Little, tiny cards.

Q Those were kept in a cabinet in the International's offices?

A That is correct.

Q I gather they were in existence in August of 1971, at the International offices?

A I am just not certain about that. 119 I know we went to the lists first and there was a jurisdictional dispute and somebody wanted to keep their own card list and against the computer list and I don't remember the time frame in which the dispute was resolved.

Q Of course the lists were under your jurisdiction as secretary-treasurer, in whatever form they existed?

A Not the card list, no.

Q Under whose jurisdiction was the card list?

A That was for the girls.

Q But who had ultimate responsibility for those lists of cards or that collection of cards?

A I assume -- I guess the officers would.

Q Yourself?

A That is correct, yes.

Q I also believe that you testified that you as secretary-treasurer provided a list of the members to the American Arbitration Association in or about August of 1971?

A No, I said the list was sent up to the American Arbitration Association.

Q When was that?

A I don't know.

Q By whom was it sent?

A And I don't think it could have been sent in August.

Q What is your best recollection as to when it was forwarded?

A I don't know when it was forwarded. It must have been some time before the ballots were mailed, for them to mail ballots.

Q That would have been September 21st?

A If you say so, yes.

Q What is your recollection as to when ballots were mailed out?

A I have no recollection as to when they were mailed out. You told me September 21st, so I assume they were mailed September 21st.

Q I am asking you whether you have any recollection?

A I don't have any recollection of when they were mailed.

Q Did you yourself participate in the decision as to when they were to be mailed out?

A No.

Q Did you yourself give any notification as to when the ballot should be mailed out?

A To the American Arbitration Association?

Q To anyone?

A I don't remember.

Q Is it possible that you had?

A Anything is possible, yes.

Q Would it have been within the duties of the secretary-treasurer to give such notification to the triple A?

A No.

Q Whose duties would it have been?

A The Ballot Committee's.

Q Did the International Ballot Committee correspond directly with the triple A?

A I don't remember.

Q Do you recall whether you yourself acted as the conduit for any transactions between the two bodies?

A I just can't remember, Mr. Danas. It's a long, long time ago.

Q Let me get your understanding as to your constitutional duties. Now, if an election were to be run now, would you consider, 1, your duties to

be a conduit between an International body and an independent campaign supervisor?

A I would consider it my duties not to be a conduit.

Q If someone on the International Ballot Committee were to seek your advice now, would you suggest that they contact the independent overseer directly?

A It would depend on what they were seeking my advice about.

Q The Ballot Committee would like to have the triple A in that case send out the ballots. Would you tell them to contact triple A directly?

A Yes, that is right.

Q To the best of your recollection, is that the case in 1971?

A To thebest of my recollection I can't recall.

MR. SCHWARTZ: Hold it.

I think he said several times he doesn't have any recollection.

Q Participation in the International's election procedure is one of the duties of the secretary-treasurer, is it not?

A Not that I know of in the constitution.

Q Well, is it the duty to maintain and forward mailing lists, up to date mailing lists for ballots to be sent out?

A One of my duties is to maintain membership lists, yes.

Q One of the purposes of those lists is for the mailing out of ballots; is that correct?

A Thatis correct.

Q What other functions does the secretary-treasurer have with regard to an election?

A To certify the eligibility of the of the individuals on the mailing list.

Q Now, in the time period between August and December of 1971, did you consider your involvement in the capacities you just described, that is the mailing list, updating and forwarding and the certification of officers, to be one of your prime duties as secretary-treasurer during that time period?

A All of those duties are done by people in an office, staff.

Q That is not the question.

I am asking you whether you considered

that to be one of your prime duties?

A Yes.

Q Were there any duties during this period that you considered to be of major importance than your involvement in the International election?

A Yes.

Q What was that?

A It was to fight for the jobs of your particular union.

MR. SCHWARTZ: You are getting into an area here, handling it in the way that it usually isn't done on an examination before trial.

He has explained to you that he was out of the country most of the time down in Puerto Rico and you are getting into an argument with him as to what he considered important. Whatever the situation, you can draw your own conclusion about it.

MR. DANAS: Mr. Schwartz, he indicated he was down in Puerto Rico in August and perhaps early September of 1971. I personally find it incondeivable that a man of Captain Lowen's background and education, has no recollection with regard to this election.

MR. SCHWARTZ: You argue that.

MR. DANAS: I would like to understand what the basis of this lack of recollection is. I am entitled to look into that.

MR. SCHWARTZ: I think you have and his answer is, and you can do whatever you want to do with it.

Q Now, is one of your duties certifying the good standing status of members for purposes of voting in the election?

A Yes.

MR. SCHWARTZ: That is what he said, yes.

Q What were the criteria used to determine good standing?

A They were not suspended for non-payment of dues.

Q How much in arrears would they have to be before they would be suspended?

A Minus $225.

Q What about pensioners, werethey entitled to vote?

A If they are dues paying members, yes.

Q Do you recall whether the International Ballot Committee in 1971 had a budget?

A A budget? No.

Q Did they have any access to funds?

A No.

Q Did the expend any funds?

A Yes, they were reimbursed by voucher upon a submission of vouchers for their expenses incurred as a Ballot Committee member.

Q By whom were they reimbursed?

A The controller.

Q Did you in your capacity have any involvement in the reimbursement?

A No.

Q Strictly at the discretion of the controller?

A No. If there's anything he questions, he brings it to my attention. If it is a voucher expense it is customarily paid.

Q Do you remember what the reimbursed expenses of the International Ballot Committee were?

A Not at all.

Q Are there any records that would indicate that?

A Yes.

Q Would you search your records and provide that information?

127

A Yes, certainly.

Q After ballots were mailed out in September of 1971, were any ballots returned for non-delivery?

A Yes.

Q And to whom were they returned?

A The AAA.

Q Was the AAA's return address on the ballot?

A Yes.

Q And did those ballots that were returned for non-delivery ever find their way to the International's offices?

A The AAA as I remember used to on a weekly basis Xerox the names of the people who were returned and provide them to our secretary, who would then check to see if there were any updated addresses for them and would provide a new address to the AAA.

Q Are you referring to yourself as secretary?

A I am referring to the office secretaries.

Q Just so we have this clear: What were the names in August of 1971?

A Mrs. Watson, and I think there was a girl named Sharon Mott and another one named Shiela and I don't

know who the others were. I am not sure whether it was Shiela or Sharon.

Q You say a copy was provided to your office by the triple A? Was that a list of returned ballots?

A Yes.

Q Were the ballots themselves physically transferred to your office?

A No, never.

Q What was done with regard to updating on those lists provided weekly by the triple A?

A If we had a corrected address, the address was sent up to the AAA, so they could remail the ballot or a duplicate ballot would go out. I don't know how they handled it. I think they sent duplicates.

Q Was this updating done under your direction and control?

A It was done by our executive secretary.

Q Mrs. Watson?

A Mrs. Watson, yes.

Q Did she ever consult with you with regard to that updating procedure?

A I assume she must have, sometimes.

Q Would those index cards that you referred

to earlier, sir, used with regard to this updating?

A I think she used those cards, yes. She has a built-in dislike for computers, I think. That's saying it nicely.

Q What was Mr. Seidman's role with regard to the computerization of the membership list, if any?

A Say it again?

Q If any.

A Mr. Seidman was the one who would send the corrected corrections to the membership list to our data processing service.

Q Did you supervise his activities in that regard?

A No.

Q Did you ever have occasion to speak to him with regard to his dispatch and handling of those duties?

A Yes.

Q What was the substance of those conversations?

A I don't remember. We discussed many things in the handling of his duties in the administration of the office.

Q Well, generally,is it favorable, were you

happy with the job he was doing?

A I was always complaining about the costs. I was mostly on his ass about that.

Q What about the time?

A The time was fairly good. We used to push on trying to get things done faster too.

Q Now, with regard to your campaign literature, how was that distributed?

A I don't know.

Q What?

A I didn't make any campaign literature. I didn't write any campaign literature.

Q Was any campaign literature in your behalf written by anyone?

A I indicated before that there probably had been.

Q By whom?

A I don't know.

As I indicated the former locals were probably sending things out.

Q I am talking about the International office staff.

A No, nothing.

Q What about Mr. Jerry Capp, did he write any

campaign literature?

A Not for me.

Q Mr. O'Callaghan?

A Not that I know of.

Q Well, with regard to the campaign literature that was written on your behalf, how was that distributed

A I don't know.

Q Could it have been by mail?

MR. SCHWARTZ: I don't want him to speculate: Could it have been? He says he doesn't know.

Q Do you recall whether any distributions of this campaign literature were made by hand to ships when they were in port?

A Probably so.

Q Do you recall by whom such distribution was made?

A No.

Q Was it made at your direction?

A No.

Q Were you consulted with regard to the campaign literature written on your behalf?

A No.

Q Were you interested in what was written on your

behalf?

A I told you before, no. I told you the last time I was here I wasn't interested.

Q Were you curious?

A Mr. Danas, I will say again: I didn't want to be secretary-treasurer and I didn't really care what was written, if anything.

This may be a peculiar statement for a union official, but that is the way I felt.

Q You also testified last time, that's the way you still feel?

A I said I still feel that way, yes.

Q So, it is your testimony that you had absolutely nothing to promote your candidacy as secretary-treasurer; is that correct?

A As best I recall, I had absolutely nothing. I made no speeches, I wrote nothing and I had nothing to promote my candidacy, yes.

Q Did you feel, in 1971, that your candidacy was in good hands?

A Whose candidacy?

Q Yours.

A I already indicated, I didn't care one way or the other.

123

Q By the way, between the last session and this one, did you check on that magazine, Masters, Mates and Pilots, to find whether there were any other issues?

A Yes.

Q What did you find?

A I saw a spring, '71 issue.

Q When was that distributed, if you recall?

A I haven't got the slightest idea; spring, 1971.

Q What about subsequent to the August '71 issue?

A I didn't see anyone.

Q I'd like to ask you to check that spring issue --

MR. SCHWARTZ: I didn't make any objection before and I don't care about your inquiring. But I did go back and check some of the prior interrogatories and as far as some of the other depositions. As far as anything relevant with publicity, on three occasions the department has indicated it has been limited to three items. What you are asking for now goes beyond these three items.

MR. DANAS: I think it bears upon the status

of the three items in question.

MR. SCHWARTZ: I don't know how it does. You know, there's a general problem here. We advised Judge Motley that we would be ready on the 17th and that advice was based on what I understood the interrogatories and the complaint and the prior testimony to be. I would like us to stay within that so we don't have to go up and talk to her and get a ruling.

MR. DANAS: We are certainly going to try.

Q Would you get me the date of the spring 1971 issue?

MR. SCHWARTZ: You ask me.

MR. DANAS: All right, Mr. Schwartz.

Will you check and see if there's an issue subsequent to the 1971 spring issue?

MR. SCHWARTZ: I'll check and see.

Q Approximately how many ballot were returned to the triple A?

A I have no idea.

Q In 1971?

A I have no idea.

MR. SCHWARTZ: Let me make a statement for

ambr 22 Lowen

the record: As you no doubt know, if you have even read the file in the most cursory fashion, the balloting was conducted in practically all respects by the American Arbitration Association. Margaret Carlson who has been the head of the Election Departme conducted this ballot. Any time you want to depose her, she would be in a position to have all this information. If I am not mistaken, she has some of th records. Any time you want to depose her, if you give me a couple of days' notice, I will be glad to attend. We have a time limitation here. Let us go about getting this stuff as quickly as we can. She knows all this stuff. Besides, Brian knows all this stuff. because he went through it with a fine tooth comb. There's no argument about that stuff.

Q With regard to the situation of the offshore division's vice presidents who are also delegates to the Executive Committee of the International --

MR. SCHWARTZ: What? Say that again?

MR.DANAS: All right.

Q The three vice presidents of the offshore division who are also members of the Executive

Committee of the International, we discussed their election in 1971.

I believe you told me at that time, there was one from the Atlantic Division, one from the Gulf and one from the Pacific?

A No. I said those were three titles. There was an Atlantic vice president, a gulf vice president and a Pacific vice president.

Q Right.

You testified earlier that the Atlantic vice president was the one who was elected Port Agent of New York?

A That is correct.

Q And the Gulf vice president was the port agent at Galveston?

A Yes.

Q And the Pacific vice president the one of San Francisco?

A Correct.

Q Under the union's current setup, is that still the case?

A Yes.

Q There is still three vice presidents to be elected?

A Yes.

Q And they are elected from each of these three areas?

A They are elected representing the three areas. But they are elected by the membership as a whole.

Q So that no longer is there a limitation on the voting section, of the section of the votes for each office?

A That's correct.

Q No longer is there a limitation as to the section of the candidates?

A That is correct.

Q These three designations still exist?

A That is correct.

Q Do you know why they do exist?

A They exist because they are in the bylaws in the constitution.

Q Do you happen to know the rational of the retention of these three area deviations?

A The San Francisco is the obvious one; San Francisco before was the -- all of the West Coast ports were one local before. The port agent in San Francisco was the former president of the West

Coast completely. So that San Francisco as the central port is the vice president for the West Coast.

Q Now, what I am asking you this: Under the new setup, the man who runs for Atlantic vice president doesn't have to come from the Atlantic region, he can come from anywhere in the offshore division?

A That's correct.

Q And he is voted on by all members?

A That is correct.

Q What is the rationale for calling him Atlantic vice president; why was that retained?

A Because he has control over the ports that control the Atlantic region.

Q What type of control?

A He is the one who controls the activities of the ports.

Q In the Atlantic region?

A Yes.

Q What type of activities come within his jurisdiction?

A If we want to promulgate a policy or indicate a decision about a contract term, instead of calling every single port and trying to talk to

everyone, we just call the vice president and say: "Joe or John or Bill, here's the latest information, will you see that the ports in your area are notified and see that they comply with whatever is to be done."

Q How would he do that?

A He would do it by telephone. Set up a conference call.

Q In the case you just described, why would that be more efficient from the International's point of view than a conference call from the International office?

MR. SCHWARTZ: I object to the question. There is no question whether it is efficient or non-efficient. Here again you are getting far beyond the scope of an examination before trial. As far as I know the question of the efficiency or anything like that, that's not an issue in this case.

Q Why was it not set up so that the International was directly contacted in the various ports?

A I wasn't here when it was set up.

Q What is your understanding?

A My opinion? My opinion is it is the most

efficient way to do things, rather than calling 28 different ports. You spend all your time on the telephone.

Q So it is more efficient to have one person do that?

A Yes.

Q Even if he is calling from New Orleans to the Atlantic region?

A Why would he be calling from New Orleans to the Atlantic region?

Q He might be the Atlantic vice president.

A How could he be the Atlantic vice president in New Orleans?

Q I thought you told me anyone can run for offshore vice present in the Atlantic region.

A No. Not unless he is the port agent in the Port of New York. If he is the port agent in the Port of New York, he is the vice president in the coordination of the ports on the East Coast.

Q He could be elected the Port Agent of New York?

A Who?

Q This fellow in New Orleans.

A He would physically move to New York and assume the vice president.

Q He would have to move?

A Yes, absolutely.

We don't have port agents in absentia.

Q You still have that automatic situation with regard to the port agent in New York, the Atlantic vice president?

A Yes.

Q And the Gulf, the fellow from Galveston?

A Yes.

Q And the Pacific, port agent of San Francisco?

A Yes.

Q Previously you described the fact that the three International officers are by virtue of their election to the International, the vice president, vice president and secretary-treasurer of the offshore division; did you not?

MR. SCHWARTZ: We went into this. I have now scrutinized all of the material in this case. Up until this situation here I am unaware that this was even argued. Now am I in mistake? Was this ever raised in the interrogatory?

MR. DANAS: Which interrogatory?

MR. SCHWARTZ: Your answer to the interrogatory. Has i. every been suggested before this

that there is something wrong with the procedure that we have?

MR. DANAS: We suggested on the record that certain members of the union were unable to vote for their officers. We feel that those allegations which were made time and time again cover this situation.

MR. SCHWARTZ: I don't think they do in any respect. The situation is clear. What is is. There's no argument about it. This is precisely the kind of thing I want Judge Motley to rule on. It is clear that the bylaws say what they say and that is that the three International officials are officials of any division that's fully formed. Whatever the legality or relevancy of that is, you can make that argument. I certainly am not going to permit you to go --

MR. DANAS: I have made that argument and I haven't gotten your answer.

MR. SCHWARTZ: I don't see any relevancy at all. They all vote for the International president.

MR. DANAS: Let us go beyond that for a moment. The last time, at the first installment of Captain Lowen's deposition, the question arose

as to what relevancy, if any, was with regard to the unin's current structure. And whether the plaintiff in this action was entitled to inquire with regard to the current structure of the union.

Now I stated at that point that we felt that it was relevant with regard to possible remedies, with regard to a full understanding of what may be involved in a supervised election and what type of further remedies might have to be sought from the Court.

Your position at that point was one of: We'll think about it, I'll let you kno "

What is your position with regard to the curre structure?

MR. SCHWARTZ: I don't know whether you characterized my position correctly. I frankly don't recall whether or not what you say now you said then. I know I felt at the previous time as I have in other instances, if you had a few questions you wanted to as and we can get done with it, I would rather not make argument.

As far as I am concerned, the issue with regard to the three International officials being officials of a fully formed division has certainly been explored enough to give you any background material.

ambr 31 Lowen

I see it nowhere as an issue in this case. The issue with regard to the automatic business concerning the officials for the Port of New York, the official for the Port of Galveston, the official for the Port of San Francisco. This was an issue originally.

MR. DANAS: What makes for an issue in this case?

MR. SCHWARTZ: There's a procedure for resolving this.

MR. DANAS: I would like to just get your position.

MR. SCHWARTZ: When you answer in the interrogatories and don't mention this. When you go through three years of never bringing it up through examination before trial where your own people are not asked whether it is an issue in this case. You don't bring it up two or three days before trial.

MR. DANAS: It is your position that you are bound by the interrogatory?

MR. SCHWARTZ: Exactly. You are bound by the interrogatory, you are bound by the statements of your own statements. You can't bring it up at this stage.

MR. DANAS: You feel it is prejudicial at this stage?

MR. SCHWARTZ: It is no area for interrogation, absent some ruling by the Court.

MR. DANAS: I'd like to on the record ask for a five-minute recess and during thattime I intend to call Magistrate Raby in order to set up or attempt to set up a conference this afternoon with regard to a ruling as to permissability of inquiry into the current organization and structure of defendant union and/or its subdivisions or affiliated bodies.

MR. SCHWARTZ: You are welcomed to do that, but on the record, I intend to make whatever objections are available at the time for following this kind of procedure.

Now if Judge Motley has assigned this job to Magistrate Raby, then well and good. Otherwise it would be my position that it is something that should come before her initially.

MR.DANAS: Magistrate Raby will be able to define to us what he understands his role to be in this pretrial discovery procedure.

(Recess taken.)

MR. SCHWARTZ: Let me remind you that we

ambr 33 Lowen

have a meeting with the Magistrate on Monday at 10 o'clock. So why don't you get through whatever you can get through and leave whatever there is to be settled on argument between us?

MR. DANAS: Is Captain Lowen available next week to continue the deposition?

MR. SCHWARTZ: Sure.

MR. DANAS: We have decided at this moment we are not going to seek a conference. We may do it some time today or with regard to your suggestion, Monday or some time Monday.

MR. SCHWARTZ: It seems to me, it behooves us as lawyers to get through with as much as we can and to actually reduce to writing where it is we agree. After all, we have both made a representation to the Court that we will be ready. If something has come up, I think we are bound and owe it to the Court to indicate that we are not in just some disagreement and we understand it enough to reduce it to writing.

MR. DANAS: I agree with that statement. Whether it is at the end of today's session or Monday, we should reduce to writing whatever problems are outstanding with regard to the scope of discovery.

Pleas. mark this document as Plaintiff's

Exhibit AA for identification.

xx (Document marked Plaintiff's Exhibit AA for identification.)

Q Captain Lowen, I show you a document which has been marked Plaintiff's Exhibit AA for identification and ask whether you can identify it.

A I know it is a letter from Burt Hall.

Q To whom?

A It is addressed to the General Executive Board, care of the International Secretary-Treasurer.

Q What is the name of the International Secretary-Treasurer?

MR. SCHWARTZ: On behalf of the defendant, I have taken a look at this. I remember the letter. I remember it coming in. I remember seeing it. I agree and stipulate that it was sent and received approximately around the time indicated on there, January 19, 1972.

MR. DANAS: For the record: It's been stipulated by counsel, that this is a letter dated January 19, 1972, from Burton Hall, attorney, to the General Executive Board, care of Robert Lowen, Secretary-Treasurer, International Organization of Masters, Mates and Pilots, 39 Broadway, New York,

New York, 10006.

Q Captain, do you recall receiving this letter?

A No, I don't.

Q Did youever respond to this letter?

A To the best of my knowledge, no.

Q There is no dispute that this letter was sent to the General Executive Board?

MR. SCHWARTZ: I just stipulated to that.

MR. DANAS: It has also been stipulated that this was received by addressee?

MR. SCHWARTZ: Yes, I told you I remember it came in and it was received and mailed around that date. I don't know what else I can tell you.

Q Do you recall receiving any other correspondence from Burton Hall in or about January of 1973?

A We have a continual stream of letters from Burton Hall.

Q Do you recall recieving any?

A Any when?

Q In and about January of 1972.

A I say we have a continual stream of letters from Burton Hall.

MR. SCHWARTZ: If you will show me the letters you have, we will stipulate to them on the same basis.

MR. DANAS: Fine.

Q Between what periods are you referring to as this continual stream?

A There is a letter or two a month ever since I come in the union from Burton Hall about something.

Q You are now talking about April of '71 to the present time?

A Yes.

Q Do you recall whether you answered any of those letters?

A I think we acknowledged receipt of some, yes.

Q Do you recall answering any with regard to complaints on the 1971 election?

A I just can't remember. I am sure if we answered the files would show it.

MR. DANAS: I would like to have this marked as Exhibit BB for identification.

xx (Letter to Burton Hall dated January 7, 1970, was marked Plaintiff's Exhibit BB for identification.)

MR.DANAS: I would like to ask Mr. Schwartz whether he will stipulate that Exhibit BB for identification is a letter to Burton Hall dated January 7, 1972 with regard to requested rulings on the 1971 International election and signed by Captain Robert J. Lowen, International Secretary-Treasurer, for the International Ballot Committee.

MR. SCHWARTZ: I will stipulate that this letter is genuine, it was sent by the defendant and I will agree that you can mark it as an exhibit, any time, any place in the trial.

MR.DANAS: Thank you.

MR. SCHWARTZ: What is the date on that?

MR. DANAS: January 7, 1972.

MR. SCHWARTZ: Let me take a look at it again?

Do you have any other correspondence?

MR. DANAS: Not at the moment. If they arise we can stipulate.

MR. SCHWARTZ: Everything can be handled that way.

Q Captain, Exhibit BB for identification was signed by you with a title "International Secretary-Treasurer for the International Ballot Committee."

What does that full title mean? 151

A I don't know. For the International Ballot Committee -- because the International Ballot Committee was dispersed.

Q Is that January 7, 1972?

A Yes.

Q What provisions were there that constituted you to be its representative of the now dispersed International Ballot Committee?

A They mailed it to somebody. I assume to the office. He must have mailed a request to the office or a telephoned request.

Q Did you receive this letter, Exhibit BB --

A Did I receive what?

Q Strike that.

Prior to answering a prior correspondence by sending Exhibit BB, did you speak to or consult with any members of the International Ballot Committee?

MR. SCHWARTZ: I am not sure I understand that question. Let me see: The letter that was marked as AA was sent after the letter that was --

MR. DANAS: Let me make it clear.

MR. SCHWARTZ: Hold it. Let me get through with what I am saying. That letter is after the letter

that was signed by Captain Lowen?

MR. DANAS: That is right.

MR. SCHWARTZ: Apparently there was a preceding -- some preceding correspondence that was addressed to the Ballot Committee.

MR. DANAS: It was a letter dated January 5, 1972.

MR. SCHWARTZ: This letter of Lowen's suggested a course of action to Hall and apparently he followed it.

Q What I am asking is: Prior to writing Exhibit BB, did you consult with any members of the International Ballot Committee?

A I don't remember.

Q Did you consult with counsel?

A Yes.

Q Now you say that the International Ballot Committee as of January 7, 1972 had been disbanded?

MR. SCHWARTZ: Dispersed he said. There is quite a bit of difference.

Q Which was it?

A Dispersed.

Q Do you know the location of the members of that International Ballot Committee?

A Yes.

Q Why did you not forward the letter of January 5, 1972 to one of those members?

A I don't know. I think that probably the reason was the Chairman of the Ballot Committee was retired; was no longer a member.

Q When did he retire?

A I think in January of '72, January 1st. I may be mistaken on that.

Q Well, there were four other members of the Ballot Committee, were there not?

A I think so.

Q Why didn't you forward the letter of January 5th to one of them?

A To whom?

Q To one of those other four members?

A As an individual?

Q Yes.

A Probably not, on the advise of counsel.

Q On Exhibit BB, you have a CC to be sent out to the International Ballot Committee; where was that sent?

A I don't know. I assume it was sent to the International if it is marked as a carbon copy.

Q Where?

A This would have to be whatever the address of the International Ballot Committee was.

Q It indicates that there was an address in existence?

A That is right, then it would be sent to their home addresses.

Q So that you were able to send copies of Exhibit BB to the members?

A Yes.

Q But you didn't deem it necessary to forward the letter of January 5th to them?

A I think I said already I don't remember if we forwarded it or not forwarded it.

Q If you forwarded it you didn't wait for a response from them, did you, I mean you made the response to Burton Hall, did you not?

A Yes, I think the letter was drafted by counsel, that letter.

Q Is that Mr. Schwartz you are referring to?

A Yes.

Q Do you recall whether any other correspondence from Burton Hall was referred by you to Mr. Schwartz prior to your preparation of a response?

A No, I don't recall.

Q Would your records indicate whether you made any other responses to Burton Hall in and about January and December of 1971 and '2?

A Yes.

Q With reference to the disputes of the 1971 election, would you check your records and provide us with any correspondence?

MR.SCHWARTZ: Ask me.

MR. DANAS: Yes. Correspondence in and about December or January --

MR. SCHWARTZ: I have a direct personal recollection of this and I would be amazed if all of this isn't in your file, because I remember going over this at a hearing of the Ballot Committee, I remember this material being discussed with Warren Berry. If I am not mistaken, you got it all already.

MR. DANAS: That may be.

MR. SCHWARTZ: If that may be, I wish you would look.

MR. DANAS: If I find ten letters, how do I know there weren't 11. I am asking you to produce whatever was sent by the Captain to Burton Hall.

MR. SCHWARTZ: I thought you wanted to know what Burton Hall sent?

MR. DANAS: No. The captain or the other officers of the International in and about December or January 1971, '72.

Further, any correspondence to Burton Hall from the Ballot Committee.

MR. SCHWARTZ: This is precisely the problem I have with the procedure you are using. Burton Hall is one of the most active rank and file lawyers around. He is here in town. All this material is available. All you have to do is ask him and sit down and produce it and I will agree to it, instead of wasting hour after hour doing it this way.

MR. DANAS: I myself have never spoken to Burton Hall, nor has any other member of the U.S. Attorney's office in the Southern District.

MR. SCHWARTZ: You can accomplish what is taking you three hours in ten minutes.

Q Do you know whether the International Ballot Committee met at any time subsequent to January 7, 1972?

A No, I don't.

Q What is the date of the last meeting that you recall, if any, of the International Ballot Committee?

A I think the last time the Ballot Committee met was at the --

MR. SCHWARTZ: Only if you know, if you don't have a recollection, don't say it.

THE WITNESS: I don't.

MR. SCHWARTZ: There are records that show all this. Every time a Ballot Committee meets, they have minutes.

Q Now, did you yourself ever direct the Ballot Committee to convene?

MR. SCHWARTZ: What do you mean by "direct"?

MR. DANAS: Normal usage of the word direct.

MR. SCHWARTZ: Somebody asked and he directed that he arranged quarters for them or he ordered them to show up, what do you mean?

Q Did you ever arrange for a meeting?

A I think so.

Q Approximately when was that?

A Probably before the ballot count.

Q You are referring now to December of '71?

A Yes.

Q What about any time prior to that?

A I just don't recall.

Q I thought your testimony earlier was that you hadn't been in contact with the International Ballot Committee in August and September of 1971?

A As best I recall, it is correct, yes.

Q How about in October and November of '71?

A Mr. Danas, I just don't remember. There are minutes of the Ballot Committee that will indicate who was in a meeting all the time and they are all on record.

Q Will they indicate who convened them?

A I don't know, you will have to examine the Ballot Committee's minutes to see it.

Q I have examined some of them and it does not indicate that and that is precisely why I am asking you.

A Ballot Committees are convened customarily by the Chairman of the Ballot Committee.

Q That is not exclusively so, is it?

A I don't know who else can convene them.

Q Can you constitutionally?

A I cannot constitutionally.

MR. SCHWARTZ: I am trying to explain to you what happens, which is perfectly obvious. The Ballot Committee chairman convenes it. The Ballot Committee doesn't get on the phone to talk to everybody, they ask the secretary-treasurer to do it or probably have somebody on the staff do it.

Q Is that true?

A Yes.

Q You do recall arranging for these meetings?

A No. I said I don't recall arranging for the meetings.

Q But you know Mr. Schwartz' statement to be correct?

A If a Ballot Committee convenes and they customarily call our office and they may speak to the secretary and say "Get me a hotel room here. Where are we going to meet?"

The secretary may say, "You are going to meet in the International Board Room, you are going to meet in the AAA. Here is your confirmed hotel reservation. What flight are you coming in on?" This is all mechanics that is handled by secretaries.

Q Who would call the secretary to inform him

that a meeting is to take place?

A Who would call the secretary to inform who that a meeting was to take place?

Q Inform the secretary.

A Which secretary or my secretary?

Q You.

A The Chairman of the Ballot Committee.

Q In the course of that phone call, would the Chairman of the Ballot Committee customarily tell the secretary of the union what the agenda of that meeting would be?

A The agenda for what meeting?

Q For the Ballot Committee's meeting, that a request is being made to arrange.

A No. Not that I can recall, no.

Q You don't recall ever being informed of the agenda of an international Ballot Committee's meeting?

A The agenda for the Ballot Committee meeting is to prepare the ballot or do something with it.

Q At what point would the International Ballot Committee ask for you to present them with a list of the members to the union, would it be some time prior to the meeting itself?

A They don't even get the mailing list though.

The Ballot Committee doesn't have a mailing list. The mailing list is provided to the AAA.

Q Isn't one of the International Ballot Committee's functions to determine eligibility of voters?

A No, that is my function.

Q What is their function?

A Their function is to prepare a ballot in coordination with whoever the impartial balloting agency is, to actually watch the count being conducted by AAA.

Q Forget the count.

I am talking now before the count, what are their duties?

All right, they draw up the ballot, the form of the ballot, the order of the ballot and the wordi of the ballot?

A Yes.

Q What else?

A If there are any challenges by people, they hear challenges.

Q Challenges to what?

A Challenges to anything that can affect a ballot.

Q Do they hear challenges to the candidacy of certain parties, if one is raised?

A They may.

Q Would you as Secretary-Treasurer appear at those Ballot Committee meetings?

A If I were present, I might.

Q Would you have to be present.

A Would I have to be present, no.

Q Wasn't it you who certified a candidate in the first instance?

A The certification of a candidate, a candidate is capable of being a cnadidate if he is a member in good standing of the Masters, Mates and Pilots and he has been nominated by at least one member in good standing and seconded by one member in good standing. The only thing that has to be done is they have to look at the dues record which is all computerized and they can see he is either suspended or in good standing. It is not necessary for me to be there.

A It is very simple to certificate a candidate, is it not?

A Yes.

Q And conversely, it is very difficult to challenge that certification, is that correct?

A I don't understand the thrust of your question.

Q If you have one or two simple criterior --

A If you have a man in good standing he is an eligible candidate.

Q If it is something you easily determined on your certification, it is hard to challenge?

A Is easily determined by the records that are there.

Q And clearly is determined by anyone on the records?

A Yes.

Q It is clearly hard to challenge such certification?

MR. SCHWARTZ: I object to that.

Q Were there many challenges to the standing or certification of candidates with regard to the 1971 election?

A I don't remember. I wasn't here when the Ballot Committee convened, as I remember. The Ballot Committee minutes would show that.

Q Did you convene and arrnage for a meeting of the Ballot Committee in August of 1971?

A I was..'t in New York City in August of

1971.

Q Did you do it from Puerto Rico?

A No. I did not do it from Puerto Rico.

Q I am going to read you a portion of the hearing of the International Ballot Committee.

MR. SCHWARTZ: Before you read from anything, you mark it as an exhibit. You mark the entire document as an exhibit and then we will refer to it.

MR. DANAS: All right. Mark this as Exhibit CC for identification.

xx (Stenographic transcript dated August 30, 1971 was marked Plaintiff's Exhibit CC for identification.)

MR. SCHWARTZ: What is that that you are identifying as CC for identification?

MR. DANAS: The document that has been marked as Plaintiff's Exhibit CC for identification is a stenographic transcript with a caption reading "In the matter of the election of the officers of the International Organization of Masters, Mates and Pilots, case No. 135-0058-71, dated August 30, 1971, 2 p.m., 140 West 51st Street, New York, New York,

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Robert H. Nelson, Chairman." 145

MR. SCHWARTZ: Let me look at that for a minute?

This is thetranscript made at the American Arbitration Association.

(Pause.)

MR. SCHWARTZ: What page are you reading from?

MR. DANAS: Unfortunately these are unnumbered pages -- I am sorry, it is at the top, I am reading from page 89.

MR. SCHWARTZ: 89, okay.

MR.DANAS: Statement by Mr. Valensi "Mr. Chairman, the Ballot Committee followed the instructions in the letter dated August 20th signed by Lowen to meet at the International Office at 11 a.m. Monday, August 30th; as per the letter we followed instructions. I just want this to appear on the record."

MR. SCHWARTZ: That appears between lines 3 and 2.

Q Does that refresh your recollection with regard to your activities of arranging International Ballot Committee meetings during August of 1971?

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A Not it doesn't. I wouldlike to suggest --

MR. SCHWARTZ: Just answer the question.

Q It does not?

A No.

Q Your position is that Mr. Valensi was in error in that statement?

MR. SCHWARTZ: That is not what he said.

Q Is it your position that Mr. Vanensi was in error in that statement?

A I think Mr. Valensi has indicated that he has a letter from me.

Q Dated August 20th and signed by you?

A Yes.

Q You stated you were in Puerto Roco and had nothing to do with organizing these meetings?

A That is correct.

MR.DANAS: I'd like to have marked as Exhibit DD a copy of Plaintiff's complaint in this action.

xx (Plaintiff's complaint was marked Plaintiff's Exhibit DD for identification.)

MR. DANAS: I would like to have marked as Exhibit DD-1 a copy of defendants' answer in this action.

xx (Defendants' answer in this action was marked Plaintiff's Exhibit DD-1 for identifi-

cation.)

Q Now in paragraph 4 of plaintiff's complaint in this action, it is alleged as follows:

"Defendant" -- referring to the organization of Masters, Mates and Pilots, "Defendant is and at all times relevant to this action has been a labor organization engaged in an industry affecting commerce within the meaning of Sections 9i, 9j and 401a of the Act (29 USC 402i, 402j and 401a)".

In response to that allegation in Exhibit DD-1, No. 4, defendant denied the allegations just read.

Now, based upon -- let me ask you this: Were you yourself consulted with regard to the preparation of the answer in this action?

A I don't even know what the question is, much le the answer.

Q That is a question.

Were you consulted in the preparation of this answer?

A I don't even know what the dates you are speaking of there are.

Q The answer was dated December 21, 1972.

MR.SCHWARTZ : This is the legal complaint

filed by the Department of Labor and this is the legal answer prepared by counsel. The question is: Do you remember you consulting me about it?

THE WITNESS: I don't remember.

Q Now, based upon your knowledge and experience in your capacity as Secretary-Treasurer, do you have any opinion as to whether the International organization of Masters, Mates and Pilots is a labor organization engaged in an industry affecting commerce?

MR. SCHWARTZ: I am going to take the trouble to write down your question and your answer, because if we get before the Magistrate or Judge Motley, prior to the record being available, I want to make sure that I have this question reproduced.

Now, will you just stop, becuase this has got to be one of the greatest questions I have heard aske for some time. I think it has been 15 years that I heard anybody suggest that this is an appropriate question for a lay witness. Let us go back to the question.

MR. DANAS: I asked whether he had --

MR. SCHWARTZ: You mean I can't ask him to read back a question?

MR.DANAS: Go right ahead. Take the time

to have it read back.

MR. SCHWARTZ: Will you read that back for me, please?

(Read.)

MR. SCHWARTZ: That is clearly a legal conclusion. The witness is not qualified to answer it. There's a procedure provided in this court that you know of and that's the procedures before magistrate when we resolve some of these issues. I think you will find these are not problems if it is handled on that basis.

MR. DANAS: All right.

Let me ask you, Mr. Schwartz, a question or series of questions.

MR. SCHWARTZ: When you get before the magistrate and prepare the pretrial order, you will know.

MR. DANAS: I would like to ask you a question, so that we can avoid this type of problem in the future.

MR. SCHWARTZ: Okay.

MR. DANAS: Is it correct that legal papers in this action -- I am now referring to the answer, interrogatories admissions and any other legal papers

that may exist -- were prepared solely by counsel for defendant union?

MR. SCHWARTZ: It was prepared by counsel for the defendant union, but obviously, they consulted with different people in respect to the different problems and the different questions.

MR. DANAS: Let me ask you this: With regard to gaining an understanding and so as to avoid any surprise or so as to avoid shaking you up, again, after 15 years of practice, I'd like to ask you what you consider to be or who you consider to be the proper person for the government to examine with regard to certain -- that you characterized as legal statements in defendant's papers?

MR. SCHWARTZ: Conclusions.

MR. DANAS: Defendant union was served with requests for admissions numbering approximately 75 such requests. With regard to the items which were denied in such request, I am now asking you, Mr. Schwartz, who the proper party to explore such denials is on behalf of defendant union?

MR. SCHWARTZ: I don't know. I would have to go over each one. Instead of all of this kind of thing, why don't you do what most people do in this

business: Find out the things you want to have stipulated to, which is obviously what you are trying to do here. There are certain jurisdictional requirements in the statute that 95 per cent of the cases aren't even argued.

MR. DANAS: I am referring specifically to the requests for admissions.

MR. SCHWARTZ: Each one probably would very.

MR. DANAS: I think we are entitled to this: On or before Monday, when we meet before Magistrate Raby, I would like a statement from you with regard to the denials -- only the requests for admissions that were denied --

MR. SCHWARTZ: Listen, you have got enough in that shopping bag bit yourself. If you got some specific problem, I have suggested many times that you sit down and draw up what the facts are and maybe we can stipulate to it.

MR. DANAS: I think we are entitled to experience with regard to the answers.

MR. SCHWARTZ: If you have a particular portion of the admissions that you want to ask me about, I will go ahead and do that.

MR. DANAS: I have asked you about the denied requests. You want me to ask this witness about each denial individually, and if he can answer it he will and if he can't you will tell me?

MR. SCHWARTZ: No, I am not going to do that. If you ask me with regard to some of these denials I am not going to sit here with you and conduct a discovery thing to please you wile we are trying to depose a witness.

MR. DANAS: I have a live witness in front of me.

MR. SCHWARTZ: We will leave. You will do what you have to do with Judge Raby. I think the way you are going about doing this -- I think what I will do on Friday is ask Judge Motley, if we can see her and have the depositions assigned to Judge Raby, so we can get done one of these days.

Obviously, you have an approach to taking these things that is going to take us forever. I am not going to sit here and go over all these admissions with you. Finish with this witness and if you want to sit down on Friday, I will do it with you.

MR. DANAS: Are you withdrawing from the

deposition?

MR. SCHWARTZ: I am not going to let you go over that with me while he has to wait.

MR. DANAS: Why don't we have the captain wait across the hall and you and I will go over this.

MR. SCHWARTZ: How many denials do you have?

MR. DANAS: I would have to count them.

MR. SCHWARTZ: You don't even know?

MR. DANAS: I will do that right now.

MR. SCHWARTZ: Yes. You have 75.

MR. DANAS: There have been 22 of the 80 that were denied.

MR. SCHWARTZ: If you want to continue with this witness,you can go ahead, otherwise I am going to announce for the record, when we come either on Friday, if I can or certainly on Monday, I am going to ask Judge Raby to have this scheduled before him so we can get it done. You do it the way you want to do it.

Do you want to finish with this witness or don't you or do you want to go through admissions?

MR. DANAS: I will ask one or two questions or more.

MR. SCHWARTZ: One or two questions we have

no objection to. 174

MR. DANAS: Then I intend to get back to the admissions at which point you are certainly free to withdraw.

MR. SCHWARTZ: Are you going to interrogate me about the admissions?

MR. DANAS: Not you. You suggested we discuss it with you.

MR. SCHWARTZ; We do it when you get done with the witness and if you think you have to bring him back for some purpose on what I told you, you can bring him back.

MR. DANAS: I think it is silly to bring him back, if there's 3 that concern him.

MR. SCHWARTZ: Let me hear it.

MR.DANAS: I don't know how many involve him. That's what I wanted to try to ascertain with the withess out of the room.

We will go on.

Q Captain, between July 1, 1971 and the present, has defendant International Organization of Masters, Mates and Pilots, maintained any collective bargaining agreements with any employers?

A Yes.

Q Can you specify the date of such collective bargaining agreements?

A Which one?

Q And the name of each employer or group of employers with which it is maintained?

A You have got to be kidding, Mr. Danas.

MR. SCHWARTZ: Hold on. This is an organization that has for probably 75 years been in existence, at least 75 years. It has for the last 20 or some odd years maintained collective bargaining agreements with 75 per cent of the shipowners in the United States. If that doesn't satisfy that part of the statutory requirement, I don't know what does. They have collective bargaining agreements they enter into periodically, sometimes every two years, sometimes every three years, sometimes every four years. As far as I know, since I have been associated with the union, which has been about 20 years, there has been no substantial period of time when they haven't had a collective bargaining agreement.

MR. DANAS: Will you stipulate that defendant union is a certified representative of employees under the provision of the National Labor Relations Act as amended or the Railway Labor Act as amended?

MR. SCHWARTZ: They are not employees, they are supervisors under the statute, the National Labor Relations Act, they have definitions as employees, representatives and supervisors. We are not legally employees. We are supervisors. I have not been aware of the fact that you have any jurisdictional question with regard to this union. That's not necessarily under the NLRA. I think it is under this statute. I have not argued and I don't intend to argue that the department doesn't have jurisdiction over the Masters, Mates and Pilots.

MR. DANAS: Can we stipulate, Mr. Schwartz, that defendant union is one"although not certified as a National or International labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in industry affecting commerce"?

MR. SCHWARTZ: There is an argument about whether or not they are a labor organization because of the provision contained in the definition under the NLRA. The Labor Management Act of 1967.

For your purposes here, I don't think it makes any difference. But I am not going to stipulate that they are a labor organization in this situation, because

that's a question as to whether or not they have or don't have supervisors -- has been the subject of any number of court decisions; has been the subject of disagreement within courts and decisions where some judges say they are labor organizations and in the very same action for the purposes of the case, they are not a labor organization.

Without doing that, we don't argue that we are not within the jurisdiction of the court.

MR. DANAS: All right.

Can I ask you to stipulate and agree that the position that you have just taken with regard to defendant union is true also with regard to the offshore division of the International Organization of Masters, Mates and Pilots?

MR. SCHWARTZ: That raises a whole bunch of questions that you are not aware of. I don't want to hav those stipulations later shown to me at some subsequent litigation. The offshore division is part of the Masters, Mates and Pilots and that is composed solely of supervisors and it raises a whole series of other questions that concern the organization.

You have a standard jurisdictional stipulation that you ask for in all these cases, that's

ambr 65 Lowen

usually settled at the pretrial.

MR. DANAS: With regard to my last question on the Offshore Division --

MR. SCHWARTZ: I can't stipulate that they are a labor organization.

MR. DANAS: Let me say for the record, so we are clear: I think that the relevancy of the questions that I attempted to ask and which we will have a ruling on from either Magistrate Raby or Judge Motley, with regard to the structure and internal workings of the union as it currently is constituted is relevant for many reasons, not the least of which is the situation and the question that I just posed to you. If we were clear as to what the Offshore Division is as it is currently constituted, the situation might be different. But we are not.

MR. SCHWARTZ: That's your own fault.

MR. DANAS: This is pretrial discovery and it is not our fault, we are attempting to get at that.

MR. SCHWARTZ: It is your fault because you don't read your file and you don't understand it.

I have indicated to you that you don't have a jurisdictional problem and I don't know what else

ambr 66 Lowen

I can tell you.

I am not going to challenge the jurisdiction and that is what you are talking about here.

MR. DANAS: You are not going to challenge the jurisdiction with regard to the International, is that right?

MR. SCHWARTZ: Or anything else.

MR. DANAS: Or with regard to the Offshore?

MR. SCHWARTZ: The statute reaches these people, of course it does.

MR. DANAS: You are now referring to the Offshore and Pilot Division?

MR. SCHWARTZ: I am talking to the entire operation.

MR. DANAS: Just so the record again is clear for any motions, et cetera, that may have to be made by either party on Monday: Are you present as attorney for the Offshore Division as well as for the International organization?

MR. SCHWARTZ: Yes.

Q Now, Captain, I would like to get back for a moment to the balloting procedures in August of 1971.

Did the International by yourself or those

under your direction and supervision maintain a list of ineligible votes?

A In August of 1971?

Q In or about August, September?

A I know we compiled a list of ineligible votes, but the time frame, I don't remember.

Q Do you recall whatwas done with that list whenever it was composed?

A Yes.

Q What was that?

A It was provided to the AAA.

Q Was that list amended from time to time as you described the membership list to be?

A Yes.

Q Now a question with regard to the affiliation with the ILA. Was that relationship ever reduced to written form?

A Yes.

Q Does your office maintain a copy of that affiliation agreement?

A Yes, it was voted on, the entire agreement was voted on.

MR. SCHWARTZ: I think I must have given you a half dozen copies of the current international

constitution. At one time or another, I certain supplied it to the Department of Labor, attached onto the last page of that should be a type in or a stick on that sets forth the terms of the affiliation.

MR. DANAS: Yes, I have that.

MR. SCHWARTZ: Okay.

MR. DANAS: Just so the record is clear and I can avoid a number of questions hopefully: Will you stipulate that the plaintiffs in this action exhausted their administration remedies within the union?

MR. SCHWARTZ: There is some question about that, probably. I think there's a substantial question, whether they had or not, but it is the type of technical defense that I am not inclined to make under normal conditions. Let us talk about that on Monday.

MR. DANAS: I would like to ask you to reach a decision on that point prior to Monday, so that if we can stipulate --

MR. SCHWARTZ: Fair enough. I will try to do that on Friday. If I haven't called you in the morning, call me and I will tell you.

Q Captain, do you recall a lawsuit brought in this court by Captain Sheldon and others with regard to certain campaign literature utilized in the 1971 election?

A Yes.

Q Were you named as a defendant in this lawsuit?

A I don't even remember.

MR. SCHWARTZ: You are talking about Judge Croake's case. I don't remember either.

Q Do you recall participating in the defense of this suit in any way?

A No, I didn't participate in the defense.

Q Do you recall that the judge in that case ordered a certain literature be sent out by the union on behalf of certain complaints in that action?

A Yes, I do, vaguely.

Q In your capacity as secretary-treasurer, did you have anything to do with the mechanics of that mailing?

A I think we provided a mailing list to the AAA to have it mailed.

MR. SCHWARTZ: And maybe important as I recall.

Q The AAA mailed those?

A I just don't remember, Mr. Danas. I know it was mailed out and we had to pay for it.

MR. SCHWARTZ: Are you sure you are characterizing that order correctly?

MR. DANAS: Ordered access at union expenses.

Q You, in your capacity as secretary-treasurer, did provide the AAA with that mailing list?

A I am quite sure I did.

Q Is that the same list they had used for prior mailings?

A Yes.

Q And for the mailing of the ballots?

A Yes.

Q Do you recall when thatmailing on behalf of the complainants was made?

A No.

Q Does the date November 23, 1971 refresh your recollection?

A I don't know.

MR. SCHWARTZ: It is all up there on record. No one is going to argue about it.

MR. DANAS: I would like to have this document marked as Plaintiff's EE for identification.

xx (Document was marked Plaintiff's Exhibit EE for identification.)

MR. SCHWARTZ: I want to see EE. You just marked it.

MR. DANAS: When we continue I will. I am not doing anything with it.

MR. SCHWARTZ: That I am not going to put up with. If you want to mark something, I want to see it.

MR. DANAS: If I was going to continue with the deposition now, you certainly are entitled to see the document, prior to any questions or prior to the witness being shown the document.

MR. SCHWARTZ: You can't mark anything without showing it to me.

MR. DANAS: That may be your interpretation.

(Pause.)

MR. SCHWARTZ: For the record, did you identify it?

MR. DANAS: Shall we do that now?

MR. SCHWARTZ: Yes. "All constitutional amendments of the 60th convention ratified - affiliations of IOMM&P is the International Marine Division of the ILA(AFL-CIO) affirmed."

(Recess.)

Q Captain, I would like to show you what has been marked Plaintiff's Exhibit EE for identification and ask you whether you can identify it and whether you have seen it before and if so what is the document?

A Yes. This is the report of the constitutional amendment ratification bill.

Q Does that document bear a date on its face?

A On page 3, it says:

"November 26, 1971".

Q Did you personally have anything to do with the preparation of this document?

A No, I didn't.

Q What about with the dispersement or dissemination of this document?

A As best I can recall it was mailed from our office.

Q Do you know who wrote this document?

A No, I don't.

Q It was mailed by the union from your offices?

A I think so; I am not certain of that.

Q Well, it bears a return address of International Organization of Masters,Mates and Pilots,

39 Broadway, New York, New York; does it not?

A Yes, it does.

Q And a U.S. first-class permit number; does it not?

MR. SCHWARTZ: What are you trying to find out? You want an admission that this is a document sent out by the union, it is so stipulated

A Yes.

MR. DANAS: Thank you.

MR.SCHWARTZ: All you have to do is ask.

Q Were you consulted at all with regard to the preparation of this document?

A I don't recall ever been consulted.

Q Were you consulted at all with regard to the advisability of having such document prepared?

A No.

Q What does this document purport to be?

A That is a report of the balloting of our constitutional referendum.

Q With regard to what?

A On the constitutional amendments.

MR. SCHWARTZ: Here, let me show you. It says all constitutional amendments and resolutions of the 60th convention ratified. They were all sent out

on the ballot. It refers specifically to one of those items which was the affiliation vote of the ILA. It is fairly clear, it speaks for itself. There were a number of other amendments that went out.

Q Captain, I direct your attention to the first three pages of this document and ask you to describe in general terms the contents thereof.

MR. SCHWARTZ: I object to that. The document speaks for itself. I don't think you can ask a witness to summarize a document in that way.

MR. ADNAS: Can we enter into a stipulation that page 3 of this document --

MR. SCHWARTZ: I have just said that it is genuine and you can introduce it as being genuine.

MR. DANAS: If it speaks for itself, I'd like to get a stipulation as to what it does say. Does it or does it not contain a pledge of a joint effort with 11 points, signed "Fraternally, Thomas F. O'Callaghan and Teddy Gleason."

MR. SCHWARTZ: You are too much. The document speaks for itself. It is accurate. That is what the union sent out and you can read it and characterize it any way you want to as long as you do it accurately.

MR. DANAS: Okay, I will do that.

For the record, page 3 of Exhibit EE for identification contains 111 --

MR. SCHWARTZ: Excuse me, off the record.

(Discussion off the record.)

MR. DANAS: -- points of a joint pledge issued by Thomas F. O'Callaghan, President, International Organization of Masters, Mates and Pilots and Teddy Gleason, president, International, Longshoremen's Association, vice-president, AFL-CIO.

Q Now on page 4 of the document which has been marked EE for identification, there is a reminder:

"December 21st, deadline for election of officers". And it states in the body that the American Arbitration Association must receive your ballot cast in the election of officers by December 21st in order for your vote to be valid.

Now, Captain, did you have any part in the decision with regard to the December 21st date included on page 4?

A I don't believe so.

Q Do you know who had determined the December 21st date for ballots?

A I assume the Ballot Committee did.

Q Can you tell me what the union expenditure amounted to in the preparation, printing and mailing of Exhibit EE for identification?

A No offhand.

Q I would like to ask you to check the union's records --

MR. DANAS: Mr. Schwartz, I would like to ask you to check the union's records and provide that information to us.

MR. SCHWARTZ: I will do it the best we can.

What difference does it make how much it costs, if there's an agreement that it was mailed out by the union, with the union's personnel and equipment?

MR. DANAS: It is certainly something that I think we are entitled to know.

MR. DANAS: I'd like to ask Mr. Schwartz directly, to have the union's records checked with regard to who actually initiated the preparation and mailing of Exhibit EE for identification to the membership of the union?

MR. SCHWARTZ: Okay. I will do that.

MR. DANAS: Further, I'd like to know who

signed checks for the payment of the preparation and mailing of Exhibit EE for identification.

MR. SCHWARTZ: I don't know that there are those signed checks for these items. I will get you that kind of information.

MR. DANAS: Also, with regard to Exhibit EE, I'd like to know if any methods for distribution were used, other than mailing and if so what were they?

MR. SCHWARTZ: Okay.

Q We may have gone into this the last time. I would just like to briefly ask it again to make sure.

With regard to the requirement of candidates in various port locations who mail their campaign literature to New York for remailing, did you yourself have any hand in that decision?

A I think that was done at the ballot committee meetings.

Q To your knowledge has the union employed such procedures in any election prior to the 1971 election?

A To my own knowledge, I have no knowledge.

Q Your best information is that the International Ballot Committee promulgated such requirement?

A Which requirement now?

Q That ballots have candidates at -- that campaign literature of candidates at various port locations be mailed to New York for remailing.

A To the best of my knowledge, yes.

Q Would the union's records reflect by whom that decision was made?

A If the Ballot Committee made the decision, I am sure it is in the Ballot Committee minutes.

Q You yourself had no contact with the Ballot Committee?

A I have testified a number of times -- at the early Ballot Committee meetings, I was in Puerto Rico.

Q Did you yourself make any arrangements for the distribution of the campaign literature of candidates in the 1971 election?

A No.

Q Do you know whether independent mailing services were retained by the union in that regard?

A I think the AAA took care of that.

Q Does that imply that no one at the union did, to your knowledge?

A That doesn't imply anything. You asked me how it was done and I said throughout the AAA.

Q All right. I will ask it directly. 192

Did anyone in the union participate in that decision along with the AAA?

A In which decision?

Q The decision we have just been talking about for the AAA to mail the campaign literature.

A This is the standard procedure for the AAA in all elections they run. They control the mailing of candidates' literature. This is one of the things that Margaret Carlson always does.

Q How did you obtain your knowledge as to the normal practices of the AAA with regard to mailing campaign literature in its supervised elections?

A From discussions with other people in the union.

Q Your union?

A Yes.

Q Which people?

A People who came out of the Port of New York, primarily. They used the AAA for all of their mailings.

Q Which persons were those?

A Any of the officials. Captain Scavo, Captain Geier, Captain Polachek.

Q It is on the basis of your discussions with those gentlemen that you purport to be familiar with the AAA's general practices with regard to campaign literature mailings; is that correct?

A I assume among other things, yes.

Q What other things come to mind, if any?

A Mr. Danas, I don't remember how I found out about it. But just in general discussions, I found the AAA controls the mailing of candidates' literature. How I came by the information, other than the fact that I know it was specifically discussed in respect of former 88, I don't know.

Q All right.

What information do you have, if any, with regard to the AAA's normal practices with regard to inspection of mailing lists by union members with regard to elections that the AAA runs?

THE WITNESS: You better repeat the question again.

MR. DANAS: Read the question back, please.

(Record read.)

A I know that the candidates are entitled to inspect the mailing list which is kept in the AAA.

Q That's your knowledge of the AAA's normal

practice?

A Yes, that's my knowledge of it.

Q Does your knowledge extend as to whether there are mailing lists that are examinable at locals that are concurrent with the AAA's office?

A I don't know.

Q Did you ask any of the gentlemen at Local 88 what AAA's practice was in that regard?

A No, I didn't.

Q That was your area of responsibility as secretary-treasurer?

A No.

Q Well, preparation?

A It was the AAA's responsibility.

Q What?

A To maintain the security of the mail list.

Q I am not talking about maintaining the security. I am talking about maintaining the list and keeping it up to date.

A Yes.

Q As far as your understanding of the union's constitution, did you as secretary-treasurer have any responsibility with regard to the mailing of campaign literature?

A No.

MR. DANAS: Now, Mr. Schwartz, getting back to the requests for admissions which we discussed earlier:

What I am going to do is look over those requests that were denied by defendant and I am going to try to be selective with regard to those denials that I think Captain Lowen may have some information with regard to. I would like to then go into those denials. If you direct him not to answer or if you withdraw him in the examination, that's within your rights.

MR. SCHWARTZ: Let us try. Let us see if we can.

Q Captain Lowen, basically, just so you understand this: The plaintiff in this action asked that the defendant union admit certain statements --

A Who is the plaintiff, you?

Q The government asked that the union make admission to certain statements. The requests numbered approximately 80. Some of those statements were denied by the union. What I am going to do is to read the statement, then tell you that it was denied by the union and ask you whether you have any

information or knowledge with regard to such denial or the factual bais of such denial. If you do, I would like you to answer, if you don't, so state.

A All right.

MR. DANAS: Of course, Mr. Schwartz, if you direct him not to answer on any of them, that's your right.

MR. SCHWARTZ: Of course.

Q Now, request No. 33 reads as follows:

"The offshore division is represented on the International Executive Board by three offshore division vice presidents representing the Gulf, Atlantic and Pacific areas respectively."

That was denied. Do you have any knowledge as to the basis of that denial?

A Yes.

Q What is that?

A It is incorrect.

Q In what ways is that statement incorrect?

A The offshore division is also represented in addition to those three officers, the three International officers, who are offshore division members.

Q So it would be the 3 International officers,

plus these three persons?

A Yes. All six of whom are offshore division members.

Q Now, request No. 35 reads as follows:

"Members of former Local 511 and 14 in the ports of Boston, Baltimore, Philadelphia, Norfolk, Charleston and Savannah were not permitted to be candidates for and to hold the office of Atlantic vice president".

That statement was denied.

Do you have any knowledge as to why that statement was denied?

A Read it once more, please?

(Record read.)

A No, I don't.

Q To the best of your knowledge, is that statement true?

A To the best of my knowledge, it is true.

Q Request No. 36 refers to those persons we just named and states that:

"They were not permitted to nominate the candidate or candidates of their choice for the position of Atlantic vice president."

That statement was denied. Do you have

ambr 85 Lowen

any reason or know of any reason for the denial of that statement?

A No, I don't.

Q Is that statement substantially correct to the best of your knowledge?

A The statement is substantially correct, to the best of my knowledge.

Q No. 37 refers to those persons again and it states:

"They were not permitted to vote for the position of Atlantic vice president."

That statement was denied. Do you have any knowledge as to reasons substantiating that denial?

A No, I don't.

Q To the best of your knowledge is that statement substantially correct as it stands?

A To the best of my knowledge, that statement is substantially correct.

Q Just to save time, request No. 38, 39 and 40 posed the exact three questions with regard to members of former Locals 4, 24 and 15, located in the Gulf Coast area and they state substantially that these memorandums were not "permitted to be candidates for and hold the office of Gulf

vice president".

In 39 that they were "not permitted to nomiate the candidate or candiates of their choice for the position of Gulf vice president".

In No. 40 that they were "not permitted to vote for the position of Gulf vice president".

Now, do you know of any reasons for the denial of those three statements?

A They are not valid voters in the particular local which was 20.

Q Excuse me.

A They are not members of Local 20, former members of record of Local 20.

Q Where was Local 20 located?

A The Texas area.

Q To your knowledge, were members of Local 4, 24 and 15 located within the port, the Gulf area of the offshore division?

A Yes.

Q Is it substantially correct as far as you know that those members were not permitted to run for the position of Gulf are vice president?

A Yes, that is substantially correct.

Q Nor t vote for members for Gulf vice

president?

A Yes.

Q Nor to nominate candidates for Gulf vice president?

A Yes.

MR. SCHWARTZ: Off the record for a minute.

(Discussion off the record.)

Q Now, request No. 69 reads as follows:

"Candidates in defendants' international election of officers were not permitted to obtain copies of the union's mailing list of members".

That statement was denied. Do you have any knowledge as to the reasons for that denial?

A No, I don't.

Q Is that statement as it stands, to your knowledge, basically correct?

A It depends on what context you put on "obtained copiesof the union mailing list". They were afforded access to examine, but they were not given physical possession of any union mailing list.

Q Request No. 70 reads as follows:

"All candidates in defendants' international election of officers, including candidates for their

respective port positions could inspect the union's membership lists only at the Masters, Mates and Pilots headquarters and at the headquarters of the American Arbitration Association, both located in New York City, New York".

That was denied. Do you have any knowledge as to the basis of that denial?

A No, I don't. I think that some of the locals kept lists still from their former members; New York, I believe, had one.

Q What you are saying is the reason that request 70 is incorrect is because there exists at some locals, a copy of a list of members of their local?

A What I said, I think that may be the reason it was denied.

Q Do you have any personal knowledge of any locals that maintained such list of members?

A Yes, 88 has a list of members, all of whom belong to their building association; and Local 90 which comprised the entire West Coast, had a list of members, all of whom belonged to their building association.

Q We are referring now to 1971.

A I am referring to 1971 also.

Q In the case of 88 and 90 thatyou have just referred to, are you saying that your information is that those unions maintained lists of members of only those locals or of the entire union?

A I am saying that members of record of former 88 and former 90 were also members of a building association that owned the buildings that the union operated out of. Each of the associations had a list of members who were members of the building association, who were also members of record of that particular local.

Q Do you know of any others besides Locals 88 and 90?

A Of my own knowledge, I am not certain.

Q With regard to Locals 88 and 90, do you know whether those lists that you referred to were open to inspection of members of Locals 88 and 90?

A No, I am not. I don't know.

Q Request No. --

A Let me just add something:

I do know that the list of members of former Local 90 that was comprised of the building association was apparently pilferred from the offices of former

Local 90 by some of the people who went out literature who were unsuccessful candidates for election.

Q What knowledge do you have in that regard?

A It was told to me by some people in Local 90.

Q Do you recall their names?

A I believe it was Captain Larsen.

Q What is his first name?

A Orion.

Q Was that mentioned to you by anyone else besides Captain Larsen?

A I think in a general conversation other people confirmed it.

Q What proof did Captain Larsen advance to you with regard to his contention?

A Well, I think the proof was self-evident in that a flood of literature reached every member of former Local 90, at addresses that were old and in some instances they were sending them to dead people.

Q Do you know when any criminal charges were brought at any level at Local 90?

A No. No one brings charges at a union level like that. It's supposed to be private. Some members use it for their own advantage.

Q Did you, in your capacity as secretary-

treasurer of the International bring that information to the president, Captain O'Callaghan?

A No, I did not.

Q Approximately when did you learn of that from Captain Larsen?

A I don't know, it was some time subsequent to the election.

MR. SCHWARTZ: What's the difference? I know you are curious.

Q Request No. 73 refers to an exhibit, which I will show you prior to asking your answer. I would just like to read the request:

"Exhibit Z referred to in request for admissions No. 71 and attached hereto, constituted defendants' official notice of election of International and Offshore Division officers".

That was denied. Prior to asking you whether you have any knowledge for the reasons for their denial, I will show you Exhibit Z.

A I have no knowledge as to why it was denied.

Q Looking at Exhibit Z, Captain, to the best of your knowledge, is it the union's notification of election for International and Offshore officers?

A To the best of my knowledge it is, and

Pilots Division also.

Q Now, No. 76 refers to an Exhibit CC, which I will show you again, prior to your answer. Request No. 76 reads as follows:

"In accordance with Exhibit CC, all candidates for office in defendants' International election, including candidates for all respect port office positions were required to forward campaign literature to New York distribution by the American Arbitration Association."

That was denied. Prior to asking you whether you --

MR. SCHWARTZ: What was that number?

MR. DANAS: 76.

Q Prior to asking you whether you have any knowledge as to the reason for their denial, I will show you Exhibit CC.

A Yes, I looked at the exhibit.

Q Can you answer the question, whether you have any knolwedge as to why their request was denied?

A It might have been denied because there are other ways they can distribute campaign literature too. There's three ways, dropping them in our union hall. If I put campaign literature on a union table, it stays

there, no matter who it is for.

Q Well, aside from the other possibilities of distribution that you have just outlined, is it true, to the best of your knowledge, that Exhibit CC did, in fact, require or attempt to require -- now it may not have been effective -- but attempted to require all candidates for International and port positions to forward campaign literature to New York for distribution by the American Arbitration Association?

A If they wanted it mailed by the American Arbitration Association, yes. If they wanted it distributed as throw-aways or dump them on ships, no. There's nothing that requires they can't do that.

Q You agree if they wanted to distribute by mail, Exhibit CC would require forwarding to New York?

A If they wanted to have it mailed by the American Arbitration Association, yes.

Q Did they have any alternatives to mailing by the Amereican Arbitration Association, as far as you know?

A A lot of it -- I just explained -- I know that Local 90 had a full membership list out in the hands of people that were campaigning.

Q Aside from this alleged criminal activity --

A Didn't even allege it was criminal activity. I never said that.

Q Aside from that alleged illegal or improper activity, do you know of any other ways that candidates could have had literature mailed, besides forwarding to the AAA?

A No.

Q Did you yourself as a candidate for secretary-treasurer receive a copy of Exhibit CC?

A Yes.

Q Also with regard to Exhibit CC, request No. 77 reads as follows:

"In further accord with Exhibit CC, candidates in order to have their literature distributed were required to contact the Election Department of the American Arbitration Association by telephone before 5 p.m. on Monday, September 13, 1971".

Do you have any knowledge as to the basis of the denial of that statement?

A No, I don't.

Q To the best of your knowledge, that statement is correct?

A I have no knowledge about it whatsoever.

Q Request No. 11 reads as follows: again there is an exhibit before asking for your answer, I will show you that exhibit.

"The certification of the results set forth in Exhibit C attached hereto represent the official results of defendants' International election of officers".

I'd like to show you Exhibit C and then ask you whether you have any information or knowledge as to the basis of the denial of request No. 11?

THE WITNESS: Can you repeat back what the question was?

MR. DANAS: Read back the whole thing.

(Record read.)

A I have no knowledge other than the fact that it wasn't the final results because you had a number of runoffs. So the results of the election were not complete until the runoffs were completed.

MR. DANAS: In the interest of time, Mr. Schwartz, I'd like to ask with regard to Exhibit C, you as attorney for the union, from whatever sources indicate to us which results of which elections contained in Exhibit C, defendant agrees with as being the final certification of that election?

MR. SCHWARTZ: I'll get you the runoff items.

MR. DANAS: Would you suply the official results of the election?

MR. SCHWARTZ: I will get the additional items.

I think we can adjourn the deposition pending anything further that may be developed on what the captains may produce or what may arise from the pending meeting before the Magistrate or the Judge.

MR. SCHWARTZ: I want to remind you that you owe me some statements and now that you are through with all of the chore and preparation and review of material that you needed to depose, Captain Lowen, how about spending some time looking at that?

MR. DANAS: We expect in the next couple of days to provide you with the documents that were requested at Mr. Berry's deposition and Mr. O'Hanlon's deposition and others that were on the record or off promised to you, which we consider to be producible.

If there's any question, we will have to take it up.

MR. SCHWARTZ: I was going to suggest --

MR. DANAS: We do understand that as far as Captain Lowen's deposition is concerned, we are

adjourning for the day, but not ending.

MR. SCHWARTZ: We have between now and the 3rd. I would suggest that everybody sit down and take a look and see what they need to try this case, on the 3rd, rather than taking additional depositions.

MR. DANAS: What I'd like to ask you is whether any arrangements have been made with regard to the depositions of Captains Nelson and Valensi?

MR. SCHWARTZ: No.

MR. DANAS: Can we have such depositions arranged for next week?

MR. SCHWARTZ: There's a real question as to whether you need them. I am going to urge that you will have to show why you need them and what you want to prove from them that cannot be stipulated. I don't see anything you can't get in the form of a stipulation. If you come up with something that I can't stipulate to that's relevant, then we'll have to do something. We can talk about that on the 3rd.

MR. DANAS: What we plan to do then is to draw up a list of proposed stipulations with regard to activities, determinations and rulings by the International Ballot Committee. If we can get stipulations as to those, fine. If not, I think we will

have to go out there.

Obviously, I think you will recognize, Mr. Schwartz, on the basis of the depositions of Captains Lowen and O'Callaghan, and with regard to their lack of information as to the workings, rulings and on the internal workings of the International Ballot Committee, on the basis of that lack of knowledge and our apparent inability to get at those bases of workings and decisions, et cetera; and considering that the International Ballot Committee is crucial with regard to the trial and determination of an election case, we feel that it will be necessary to depose those gentlemen, in the absence of a full stipulation as to the facts that we consider to be necessary for trial.

MR. SCHWARTZ: Let's see how we go with regard to the stipulations. Maybe we will be able to do it and maybe we won't.

MR. DANAS: We expect to have those requests for stipulation to you in the next day or two.

If we can't stipulate as to those requested facts, you realize we have to have the depositions of those gentlemen scheduled at the earliest possible time, probably at the end of next week.

MR. SCHWARTZ: I don't really see anything to that. We will see what we can do. I don't share your feelings about all this. I think this could have been handled a lot simpler with a lot less difficulty. I am still anxious to avoid any difficulty we don't need.

I think a lot of the stuff you want is available right here in the city from the American Arbitration Association. Let's see what happens. You draw up some of that material and let me see it.

MR. DANAS: Do we have a deposition scheduled for tomorrow?

MR. SCHWARTZ: No, I'm going to wait and look at this material.

MR. DANAS: We had the continuation of Captain O'Callaghan's deposition.

MR. SCHWARTZ: I have to go out of town tomorrow.

MR. DANAS: Can we put in the continuation of Captain O'Callaghan's deposition for Monday?

MR. SCHWARTZ: Sure.

MR. DANAS: After our meeting with the Magistrate?

MR. SCHWARTZ: If there's going to be any

successful effort made to do this and if it is going to be done on any kind of basis to do it instead of striking each other with stipulations, then you are better off thinking of O'Callaghan for Tuesday morning.

MR. DANAS: Let us plan on Monday after meeting with the Magistrate.

MR. SCHWARTZ: I know that he is going to be around Friday and I will have to check. I will talk to you in the morning.

MR. DANAS: I agree with your statement that we ought to utilize the time to reach agreement on some of these points.

MR. SCHWARTZ: He is not available any time you want him. There's a meeting of the board of trustees on Tuesday.

MR. DANAS: This is a lawsuit and we have time limits and it is incumbent upon me to make that clear to you.

MR. SCHWARTZ: We will do that. We can't just suit the lawyer individually.

MR. DANAS: Hopefully we can do that.

(Time noted: 6:03 p.m.)

Subscribed and sworn to before me
this day of 1974.

ambr

CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ANTHONY MANCUSO, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That ROBERT J. LOWEN, the witness whose deposition is hereinbefore set forth, was previously sworn, and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of July 1974.

Anthony Mancuso

Anthony Mancuso

WITNESS INDEX

NAME	PAGE
ROBERT J. LOWEN	116

EXHIBIT INDEX"

Plaintiff		Page
AA (id)	Document.	147
BB (id)	Letter to Burton Hall dated Jnauary /, 1970.	149
CC (id)	Stenographic Transcript dated August 30, 1971.	164
DD (id)	Plaintiff's complaint.	166
DD-1 (id)	Defendants' answer in this action.	166
EE (id)	Document.	184

Deposition - O'Callaghan dated May 22, 1974

2527a

U.S. DISTRICT COURT
FILED
JUN 16 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

JAMES D. HODGSON, Secretary of Labor
U.S. Department of Labor,

Plaintiff,

-against-

72CIV5031 CBM

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Defendants.

- -x

DEPOSITION of Defendant, by THOMAS F. O'CALLGHAN, taken by Plaintiff, held at the offices of United States Attorney, Southern District of New York, Foley Square, New York City, Room 329, on the 22nd day of May, 1974, at 1:00 p.m., pursuant to notice dated June 2, 1973, before Anthony Mancuso, a Notary Public and Shorthand Reporter of the State of New York.

70

VOL #11

A P P E A R A N C E S :

PAUL J. CURRAN,
United States Attorney,
Southern District of New York,
Attorney for Plaintiff,
BY: JOSEPH D. DANAS, ESQ.,
DENNISON YOUNG, JR., ESQ.,
BOBBY C. LAWYER, ESQ.,
Assistant U.S. Attorneys

MARVIN SCHWARTZ, ESQ.,
Attorney for Defendant,
243 Waverly Place,
New York, New York

ALSO PRESENT:

Ms. DIANE J. AZERLING,
U.S. Department of Labor

BRIAN P. O'HANLON,
U.S. Department of Labor, Management Services Div.

* * *

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within depsoition may be signed

and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

IT IS FURTHER STIPULATED AND AGREED that a copy of the within deposition shall be furnished to the attorney for the plaintiff, without charge.

* * *

THOMAS F. O'CALLGHAN, having first been duly sworn before a Notary Public of the State of New York, hereby testified as follows:

MR. DANAS: Before beginning the examination, I'd like to state for the record that this examination is being conducted pursuant to a notice to take deposition of T.F. O'Callghan, President of the International Organization of Masters, Mates and Pilots dated July 2, 1973 and extended upon stipulation and consent of the parties to this date.

MR. SCHWARTZ: In this regard I have an original and a copy of Brian O'Hanlon's deposition that was taken the other day. Although it's not clear yet as to whether or not we had

finished that examination -- that will depend upon whether or not certain material is furnished to us and after we review that material -- from the point of view of expediting things and in order to avoid undue delay, particularly since we now have a firm trial date, what I have done is brought over with me an original and one copy of what we have taken so far and I want to hand it to you now and ask that just as quickly as you can, hopefully within the week or so, that you get it back to me signed, so I know just what the situation is with that.

MR. DANAS: We'll do that with regard to the accuracy of what is in this record.

Also I would like to ask you, Mr. Schwartz, whether we can establish a date pursuant to our agreement in Magistrate Raby's office with regard to the deposition of Mr. Nelson and/or Mr. Valensi, members of the International Ballot Committee of the IOMM&P.

MR. SCHWARTZ: I don't have dates for you. I know where they are now and Nelson for example is on the West Coast. I thought he was out on a boat that he was planning on taking around on a world cruise, but he is in California. The boat apparently hasn't gotte

underway. He's in Long Beach.

Valensi is also in Long Beach and they are both available out there for you to depose. If you decide you want both of them, come on out and we'll depose both. And I will sit down with you after we finish the depositions that are here and we will figure it out.

MR. DANAS: Can you give me a period between which dates they will be in Long Beach?

MR. SCHWARTZ: Well, they are there pretty much on a regular basis. So it's a question of working that out between us. I would suppose a good time would be the week of the 3rd. I can't do anything next week myself. We've got Captain Lowen tomorrow. We have go t the matter to finish up with regard to O'Hanlin's deposition. Next week is a short week. It seems to me the best week we could look forward to is the 3rd.

MR. DANAS: Is there any chance we could avoid the expense of a battery of attorneys traveling out to California and instead bring either one or both of those gentlemen to New York?

MR. SCHWARTZ: The expense runs both ways. I don't see why you need a battery of attorneys. You

have people out there as well as here. Let's get O'Callghan's deposition. Let's get done with him. He has his own commitments and we'll talk about it when you are through with him.

MR. DANAS: I understand from the reporter that he can only go until about 5:30 today. If we don't finish today, can we continue tomorrow?

MR. SCHWARTZ: No, not with him. He has commitments tomorrow.

Instead of talking about all the things we are going to do, why don't we get started.

MR. DANAS: I would like to clear this up because of the time problems.

MR. SCHWARTZ: Let's see what happens. Everybody wants to get ready by the trial.

DIRECT EXAMINATION

BY MR. DANAS:

Q State your name, please.

A Thomas Francis O'Callghan.

Q What is your address of residence?

A I live in Warm Springs, Virginia.

Q Is there a street address?

A No, Post Office Box 742.

Q What is your age, sir?

A I am 62.

Q What is your current position, if any, with the defendant union?

A I'm President.

Q For how long have you been President of the union?

A I am finishing up seven years.

Q Y ou were first elected in what year?

A Seven years ago.

Q Well, do you recall the year?

A It would be -- we had elections in '71. Four years prior to this. It was the election of '66 I believe. I believe it's right. I'm finishing up seven years.

Q Was there a union election held for the office of President in 1968?

A Yes.

Q Did you run for President in that year?

A Y es.

Q You also ran in 1966?

A I have to get the dates right here. I was elected and I gave up a year so I could be a little bit fouled up. Three and three. No, I'm finishing six years as President now. I gave up one year as

President to get the election dates for all officers the same. I was elected for four years but gave up one year the last time I was elected. That's why I'm wrong. I'm finishing up six. I'm finishing up my sixth year now. The end of this year will be six years.

Q Can you state as briefly as possible your educational background?

A I've completed a year of college, of actual college and time in at other studies. One year of college, full, I got, and I have other college credits.

Q Do you hold a position now as Captain of -- sailing ships?

A Not sailing ships.

Q Do you hold a position of Captain?

A I'm a Master Unlimited of steam and motor vessels.

Q What does that mean?

A The vessel is propelled either by steam or by diesel engine, but not by sail.

Q For how long had you held such certification or license?

A I've got -- I'm going into -- I believe I

have my 6th issue.That means I've had it for 25 years as Master.

Q Master means Captain of a ship?

A Yes.

Q Do you currently sail?

A No. I haven't sailed since 1958.

No, it was three years before that; '55 is the last time I had command.

Q '55?

A Yes.

Q What occurred in 1955 to curtail your sailing career?

A I was appointed Port Captain by the company I work for.

Q What port?

A Well, the Port Captain is not necessarily assigned to a port. I was assigned to the East Coast at first and then I was assigned to Baltimore later.

Q Was this a position within the defendant union?

A No, steamship company.

Q You were an employee of what company?

A States Marines Lines. I had charge of loadin and discharging of their ships.

Q That was in 1955 that you began that position?

A Yes.

Q Is that a labor position; did you have anything to do with labor?

A That was strictly supervisory. I had charge of all the longshoreman and overtime and ordering of --

Q You would deal with labor problems?

A No. I had nothing to do with the settling -- my job was to see the ships were loaded in a stable manner and to see they got loaded and in and out of port. I had nothing to do with the settlement of any beefs with the longshoremen that arose.

Q When you say overtime; for instance, what did you have to do with regard to overtime?

A I would have to okay the over me. Certify that it was worked.

MR. SCHWARTZ: I have no objection to your spending your time asking these kind of question.

MR. DANAS: I want to get a little background as to his labor experience.

Q When for the first time did you assume a

position with the IOMM&P?

A In 1958.

Q What position was that?

A Secretary-Treasurer of Local 14 in Baltimore.

Q You were a candidate for that position in 1958?

A That's right. While I was Port Captain I rar for the job and I was elected.

Q Did you hold another position subsequent to that?

A Yes. I held the International Secretary-Treasurer's job from '62 to '66.

Q Between 1962 and 1966, who was the International President?

A Charles Crooks.

Q Who was the International Vice-President duri those years?

A Crooks was the Vice-President, Lloyd Sheldon was the President.

Q Briefly, what were your duties as Secretary-Treasurer of the International?

A I had charge of the records as they were given to me by the locals and generally the communications and -- sent out from the International

office.

Q Did you, in that capacity, have access to mailing lists of the members of the union?

A International Secretary-Treasurer, yes. At that time we didn't have mailing lists as we now know them. But what mailing lists we had they would come under my supervision.

Q Between 1962 and 1966, in your capacity as Secretary -Treasurer, did you have occasion to supervise or have any dealings with national elections, International elections?

A Didn't supervise any, no.

Q Did you have any dealings with any election; did you mail out any literature?

A No, I didn't.

Q Or any information with regard to elections?

A Yes, what was required by law I sent out.

Q Which election were you involved in as Secretary-Treasurer?

A It would have been the International election undoubtedly.

Q Do you recall the year?

A In '65, I believe. That was the year I ran against Sheldon, the incumbent President. Certain notices I had to send out, they were sent out by me, under my signature.

Q You were undertaking those duties while you were a candidate for International President; is that correct?

A Yes.

Q You were defeated in that election for President?

A No.

Q In 1965 were you defeated?

A No.

Q You won?

A Yes.

Q I thought you stated earlier you first became President in 1968?

A I corrected that chronologically, I believe. Maybe I'm getting fouled up here, I don't know. '62 -- well, '65 -- '65 was the election year. I became President in '66. No, I didn't. I'm wrong here altogether.

Six years ago was -- this being '74, was '68. I became President at the first of '68. Therefore

it was '67 that I should have made all that reference to, that I sent out the election notices.

Q That was in connection with the 1968 election that you sent out notices, etc., in '67?

A Yes. That was when I ran against Sheldon the first time. I ran against Sheldon twice. He ran against me twice. Whichever way you want to say.

Q Let's just make sure we have this straight.

A Right.

Q 1965 to 1968, Lloyd Sheldon was President of the International?

A Right, '64.

MR. SCHWARTZ: Incidentally, if the records are there; I will get this for you if you want it.

MR. DANAS: I think we can clear this up quickly.

MR. SCHWARTZ: It's a little confusing because the jobs have been rotated and somebody died. I can get there and give it to you if you want it.

MR. DANAS: If we have to.

MR. SCHWARTZ: Fine.

Q In 1965 when Lloyd Sheldon was elected President of the International, did you run against him in that election and lose?

A '65, no. I ran for Secretary-Treasurer-- at the end of '65, I defeated -- at the end of '67.

Q Let me say -- did you ever run against Lloyd Sheldon and lose?

A No.

Q You ran against him in 1968 and you defeated him?

A That's right.

Q You defeated him again --

A '67 and '71 is what it was. You see, we took office the following year.

Q Yes, I understand that.

You --

A The fact that I gave one year up I got fouled up.

Q You ran for International President twice?

A Yes.

Q You won each time?

A Right. I also back in, I think it was '61 -- I ran against Crooks and I lost. Crooks beat me.

Q Currently you are serving your second term

as President of the International?

A Yes.

Q Is President of the International a full-time job?

A Yes.

Q Where are the union offices?

A 39 Broadway.

Q You stated before that you live down in Virginia.

A That's right, that's my home address. My family is there.

Q Logistically throughout the work year, where are you located with regard to your union activities?

A I can be all over the country. There's offices in every part of the country. I spend a lot of time in Baltimore at our school. I go out to the West Coast or New York City or if my presence is required, I go down to New Orleans.

Q Are there more than one International office?

A Yes.

Q Besides the one at 39 Broadway?

A Yes.

Q Where are the others?

A In San Francisco, we have an International office.

Q Do any of the International officers spend their full time out in San Francisco?

A Yes, the International Executive Vice-President.

Q Who is that?

A William Caldwell.

Q He lives out in San Francisco?

A He lives up in Oregon; that's his home.

Q What about Captain Lowen?

A Captain Lowen, his home and wife is out in the Bay area of San Francisco.

Q How many hours per week on the average do you spend at the International office at 39 Broadway?

A There isn't any average.

MR. SCHWARTZ: What's the relevancy of this; it's a full-time job.

MR. DANAS: I'm trying to pin down where the locations are.

MR. SCHWARTZ: The main office is at 39 Broadway. That's where all the books and records

are.

Q You said there was no average?

A I don't have an average. No. Maybe if I took all the time I was here and divided by 52, I would have an average of what I spent in New York. I don't average three days a week here or four days.

Q What are your duties as President of the International?

A I am the Executive Officer of the union.

Q What are your day to day duties in that regard?

A Taking care of the -- supervising the affairs of the union.

Q What type of affairs?

A Anything; New York City practically everything now is under my supervision as far as the day to dayrunning of the union.

Q When you say "Everything now," was there a change from prior practice?

A Yes.

Q When did that change occur?

A When the new constitution came in.

Q What change was effected with regard to

the duties of President by that constitution?

A There was a total change-around of the office of President. The entire structure of the union was changed; the International Executive Board, the locals were dispensed with.

Q How was the Executive Board changed?

A Before the Executive Boards were -- each local -- the Executive Officer of each local was a member of the Executive Board. There's no more locals. So it's an entirely different set-up now.

MR. SCHWARTZ: I don't interrupt to indicate in any way wanting to stop you from continuing along this line. I have no objection to your doing it. The old constitution and the new constitution and the by-laws all set this forth. I presume they are in your files. If you need extra copies, I would be glad to get them for you.

MR. DANAS: I appreciate that, if we don't have them. What I am trying to get at are the day to day duties of the office.

Q Who constitutes the new Executive Board of the International?

A The Executive Officers of the divisions

and the three International -- the three Vice-Presidents of the Offshore Division and the Executive Officers of the remaining subordinate bodies.

Q What are the three offshore divisions?

A The offshore division vice-presidents -- the offshore division is the entire -- all the locals, former locals, offshore locals have been combined into the Offshore Division.

Q Are there any sub-divisions within that?

A No.

Q Now, that one offshore division provides members of the Executive Board?

A Yes.

Q And how are they elected?

A By ballot.

Q Are there any breakdown in areas? First of all, how many vice-presidents are there?

A There's three vice-presidents. There's a Vice-President of the Atlantic, Gulf and the Pacific.

Q Just briefly, would you outline which areas are emcompassed within each of those?

A The Atlantic is from the Canadian boarder to Jacksonville, Florida; Jacksonville, Florida to

Brownsville, Texas, is the Gulf and the entire West Coast and Hawaii is the West Coast.

Q Each of those areas elects one Vice-President who sits on the Executive Committee, is that correct?

A In the interim period --

Q I'm talking about now.

A There's never been a vice-president elected by the entire district. During the interim period, the constitution called the vice-president -- the East Coast Vice-President would be the agent elected in the Port of New York and the agent elected in the Port of Galveston would be the Gulf Vice-President and the agent elected in San Francisco would be the West Coast Vice-President. The election will be different next time than they were last.

Q That was true of the 1971 election.

A That's true, that was an interim election.

Q In the 1972 election -- let me just recap -- the port agent of New York became the Vice-President of the Atlantic Division of the Offshore Division?

A That's true.

Q The port agent of Galveston became the Vice-President of the Gulf Division of the Offshore Division?

A The person who is elected port agent.

Q What about the Pacific, was that San Francisco?

A San Francisco. For the interim period, we were sure and as it turned out I believe it was correct. They were the persons who received the greatest amount of votes inany case.

Q Those three gentlemen sat on the Executive Committee of the International along with the three International officers?

A That's right.

Q Is that right?

A And -- now are you talking about the International -- we are not talking about the Offshore Division?

Q There was an International Executive Committee.

A That's right.

Q Comprised of the three International officers, plus the three gentlemen you just described.

A Plus the executive officers of the remaining subordinate bodies.

Q What are the remaining subordinate bodies?

A We have a Pilot Division and we have the Inland Division, is not a fully formed division yet. There are still inland locals. All of the executive officers of those locals are members of the International Executive Committee.

Q How many members does that make of the International Executive Committee?

A Well, let me get a pencil here.

Q Approximately, then?

A A dozen.

Q What are the functions of that Executive Committee?

A To act in between conventions.

Q In what area of the union activity?

A Anything that is brought before them.

Q What types of matters must be brought before them, if any?

A We have to have a meeting once a year and then anything that is sent in by anybody on the agenda is taken up by the -- anything at all, whether it be a gripe or a suggestion or anything else

2550a

is taken up by that body.

Q Does that body have anything to do with international or local elections?

A They might if there was a beef sent in or a complaint sent in, they might take some action on a complaint.

Q With regard to the 1971 elec ion at issue here, did the Executive Committee have any involvement in the election?

A I'd have to look that up.

Q Where would you look that up, in the minutes of the Executive Committee?

A Yes.

MR. DANAS: I'd like to ask that that information be checked.

MR. SCHWARTZ: Let me understand.

MR. DANAS: And provided if it does exist. What we are looking for is any involvement or decision-making onthe part of the Executive Committee of the International, with regard to the 1971 election.

MR. SCHWARTZ: Okay.

Q By the way, Captain, you don't have any of those minutes here with you today?

A No.

Q Did you bring any documents with you today?

A Nothing pertaining to this. Everything in my bag is personal stuff; shaving gear and things like that.

Q We won't ask for production.

A I plan to leave for Baltimore as soon as I get through here.

Q Now, the structure that you have just described you refer to as interim, is that the structure as the union exists today?

A Yes.

Q Is that the contemplated structure of the union in the near future?

A Yes.

Q What did you mean by interim?

A In the next election, everyone in the Offshore Division will vote for all officers. Prior the locals only voted for the local officers and the international officers. But now, they will vote for everybody in every port. Every member of the Offshore Division will vote for every agent and official in every port where they are elected.

Q Just by way of example: Are you saying if somebody is running for port agent in Brownsville, Texas, that offshore members in Savannah, Georgia will vote for him?

A Absolutely, and they will vote for the man in Seattle and New York.

Q That wasn't true in 1971?

A No.

Q In 1971 a member voted only for his local candidate?

A And the international officer. Everybody voted for the international officers.

Q In 1971, I believe you stated that whoever was elected port agent of New York automatically became a Vice-President of the Offshore Atlantic Division and a representative to the Executive Committee; is that correct?

A That's correct.

Q With regard to that individual that I just described, the port agent of New York; in the 1971 election who voted for him, who was able to vote for him?

A The members of former Local 88, which was the members who belonged to local whose main office

was in New York City.

Of course those people could have lived in Brownsville or they could have lived in Seattle.

Q Now, the former Local 88 that you referred to is in the Port of New York; is that correct?

A That's right.

Q Those were the only members who could vote for port agent New York City; is that correct?

A That's correct.

Q So that a member of the Savannah local couldn't vote for the port agent of New York?

A That's true.

Q In 1971?

A That's right.

Q Nor could a member in the Boston local?

A That's right.

Q Or the Baltimore local?

A True.

Q By virtue of the fact that under the existing by-laws the port agent of New York automatically became Vice-President of the Atlantic

Division; it's true, is it not, that the members that we just described in Baltimore and Boston and Savannah didn't vote for the position of Vice-President of the Atlantic Offshore Division?

A That's true. They voted on the constitution that made the interim period.

Q What we said is also true of the Gulf area?

A Yes, and also true of the West Coast. Although the West Coast there was one local out there, so everyone on the West Coast voted for the San Francisco agent. Former Local 90 included the entire West Coast.

Q With regard to the Gulf area, only members of the Galveston local were able to vote for the Vice-President of the Gulf Offshore Division; is that correct?

A That's right, voting for the port agent; they also voted for the Vice-President.

Q It's also true, is it not, that not only could members of only the New York and Galveston locals vote for the Vice-President of their respective offshore divisions, but they were the only ones who could run for that position; isn't that true?

A That is true.

Q They were the only ones who could nominate candidates for those positions in 1971?

A That's true.

Q Now getting back to the day to day duties of the President. You have mentioned negotiating labor contracts.

A Yes.

Q What else do you do?

A Well, if I hadn't been here today -- I had an appointment to testify before the Senate Committee, I was due to go up there today, but I had to give that up to come here. I testify in Washington, I take care of legislative affairs.

Q You act as Chairman of the Executive Committee?

A Yes, I am Chairman.

Q Do you have anything to do with financial planning of the union?

A I beg your pardon?

Q Do you have anything to do with financial planning of the International?

A I certainly discuss it with other officers of the union and I always have a good look

at where the money is going and so forth; yes.

Q As President do you plan the yearly convention of the union?

A That's planned by the convention itself. All of the communications -- that whatever might be on the -- that is not described in the constitution, it's sent to the Secretary-Treasurer. If I get any I give it to him to put it on the agenda. I appoint the committees in the convention.

Q Just in general terms, what types of activities does the yearly convention undertake or look into on off-election years?

A We have an agenda that is standard and anything that comes before any committee is taken up. Sometimes they are long and sometimes they are short. Take up anything that is necessary for the good and welfare of the union.

Q Now, the re-organization that you mentioned with regard to the offshore voting, when was that effected; when will that be effected?

A It became effective in the interim period -- three years now, if I am not mistaken. It will be ending three years now.

Q I didn't get that.

A We'll be finishing up three years under the single structure in the Offshore Division. Three years ago was '71. Beginning of '71.

Q Am I correct in stating this new structure went into effect almost immediately after the 1971 election?

A Shortly after.

Q Early 1972?

A Yes.

Q Was the 1971 election conducted under the old by-laws; is that what you stated?

A No. It was rather a combination -- you see, we are in a real total change in the union. It was an election that was a combination of national and a combination of local elections. That was part of the manner in which the union was consolidated; part of the agreement in which the union was consolidated.

Q What agreement is this?

A Well, part of the convention proceedings, that for the first election all hands, everyone would vote for the international officers, but on the same ballot they would vote for their local officers; what was their local officers, who are the port

officers in effect now.

Q That was the type of ballot you used in 1971?

A That's true.

Q At what convention was that decided upon?

A The other convention -- oh, Lord --and there was a combination of the International Executive Board meetings and conventions that finally culminated, I believe, in New Orleans maybe sometime in 1970 or '71. We had a tremendous amount of meetings at that time and I don't recall the exact date.

Q It couldn't have been in 1971 because your convention was in Galveston; isn't that correct?

A We had conventions one, two, three. The last couple were in Baltimore, I know. We had New Orleans and Galveston fairly close together. But this thing started up in Atlantic City, plus we were down in Puerto Rico. This thing didn't come around like that. It was a long, drawn-out thing. I would have to look that up. It's all available; all of our records are available. I don't remember just the exact manner in which it was accomplished. But I do know it was a result of the

last -- the latest convention action prior to the election that it was voted up that that would be the manner in which the election would be conducted.

MR. SCHWARTZ: Excuse me a minute. Let me just say this to you: Your clients have also challenged -- also challenged the change from the old procedure to the new structure. That matter was tried before Judge Knapp and was dismissed after plaintiff's case and was then appealed to the Court of Appeals, where the matter is still pending decision. There are briefs that are available that have carefully and meticulously laid out all the different dates when everything was done. If that is any help to you, I will get it for you.

MR. DANAS: I would appreciate that.

MR. SCHWARTZ: We had to look up all the different dates and I'll get that for you.

MR. DANAS: Fine.

Q Captain, whenever these meetings which counsel will provide a record of took place, I assume they were prior to 1971?

A Yes, prior to the election.

Q Did you personally have any hand in these meetings; did you attend these meetings?

A I was Chairman, frankly, of all of them.

Q Were you for these changes, personally?

A Absolutely, yes.

Q Were you the one that suggested that the 1971 election be run in the manner in which it was run; in other words, the split ballot?

A No.

Q How did that come about; who suggested that and what was the discussion and how was it finally resolved to handle it in the way it was handled?

A I would have to go into the record. I don't recall-- it was a general agreement that they would handle it in the same way that they handled it before; that the men would have their own former local membership vote for them.

Q Well, at the meetings that discussed these changes, do you recall anybody suggesting that the 1971 election be run as you were planning the next one to be run?

MR. SCHWARTZ: Do you mean by that --

A It wouldn't be run in the same way. No.

Q Let me rephrase the question.

You next election, you have mentioned and

testified that all members of the Offshore Division will vote for all offshore position officers; correct?

A Yes.

Q Now, did anyone at any of the meetings prior to 1971 suggest that the 1971 election be run on that basis?

A Not that I recall.

Q You yourself didn't?

A No, I didn't.

Q Did you have any views on whether it should be effective in 1971?

A I had to run that way myself. I had to run where everyone -- I was on the ballot where everyone voted, so I would certainly have no objection, if everyone else went the same way. I didn't suggest that they do it. I don't think it's any secret that everyone that was in knew their own membership better than they knew the entire membership.

Q In 1971 did you run for any office besides International President?

A I ran for convention delegate -- I'm not sure, it probably was earlier. Yes, I ran on the same ballot in the convention in Baltimore,

for my former Local 14.

Q Is that considered to be a local elective position in the union?

A Prior?

Q In 1971.

A Yes.

I had been the -- elected before in that position.

Q Was there any problem that you saw at that time with regard to being an international and a local officer in the same election, candidate?

A You don't consider a convention delegate an officer of the union or an officer of the local either. He's merely a convention delegate representing the local that the -- in all the time that I have been in an international office, I have been a delegate in my former local. I always did run for it, from the very first time I ran for office in the union.

Q Your former local was in Baltimore?

A 14, that's right. 14 extended Baltimore, Philadelphia, Norfolk, Charleston and Savannah.

Q Now, in 1965 when you ran for the position

of Secretary-Treasurer of the International; do you recall who nominated and seconded your nomination at the '65 convention?

A No, I don't.

Q What about in 1968, when you ran for International President, do you recall who nominated you for that position?

A No, I don't.

Q What about 1971, Galveston, the very last time you ran, do you recall who nominated you?

A I undoubtedly would recollect the person, but I don't know who it was. Probably several hands up and I point out one.

Q It didn't matter to you then?

A That's a matter of record. We have a courtreporter's minutes of who nominated me. I think it could have been Bob Durkin on the West Coast, but I am not sure.

Q That was in 1971?

A It may not, I don't want to say who it was. I don't know. I don't recall.

Q Now, with regard to the 1971 Galveston convention, what were your duties at that convention as President?

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A I was Chairman of the full convention meetings.

Q Now, at the convention there were committees selected, were there not?

A That's right.

Q One of which was the International Ballot Committee?

A The Ballot Committee is elected by the convention, they are not selected.

Q The other committees are appointed?

A Yes.

Q By whom?

A The President.

Q That was you?

A Yes.

Q You appointed all the committees other than the International Ballot Committee?

A Oh, days before the convention commences.

Q How were those choices made?

A I make them myself.

Q Do union members contact you and tell you they are interested in being appointed to any committees?

A Sometimes.

Q Are these committee slots sought after by union members?

A When you say "union members" who do you mean, rank and file?

Q No,officers in the union on the local level.

A They generally accept whomever the President appoints. I don't recall any coming around and asking to be appointed to a certain committee.

As I say, they are appointed 10 days before the convention starts. I have to send that out 10 days before.

Q Do you recall in the 1968 election in which you defeated Captain Sheldon. what your margin of victory was?

A It was a landfall of about 150 votes.

Q Out of about how many cast?

A I think we had about, somewhere around 50 percent vote at that time. Between five and six thousand, maybe it was between four and six.

Q It wasn't a large margin?

A It was a landfall for us, it was a real victory.

Q Would you consider it a mandate?

A Yes. You can check all Masters, Mates and Pilots elections; they are all close.

Q Historically close?

A Yes.

Q Is there any reason you can account for the closeness of these elections?

A Differences of opinions.

MR. SCHWARTZ: It's a democratic process of a bunch of guys who figure they are all Captains.

Q Do you recall what your victory margin was in 1971?

A Couple hundred, 150, 175.

Q Out of about how many votes cast?

A I think it ran around 62 percent at that time.

The Masters,Mates and Pilots, I consider, one, a total victory and two, a landfall; two hundred is quite comfortable.

Q Did there come a time in 1971 that you as President of the International sent out a notice of election for that year?

A I beg your pardon?

Q Did there come a time in 1971 that you

as President of the International sent out notices of the upcoming election?

A I believe the secretary did.

Q You don't recall sending them yourself?

A Not unless the secretary was out of town; I don't believe I did.

MR. DANAS: May I have this marked as Exhibit A for identification, please.

(Notice of upcoming election of 1971 marked Plaintiff's Exhibit A for identification.

Q Captain, I'm going to show you a document which has just been marked Plaintiff's Exhibit A for identification and ask you whether you can identify it and if you would describe it for the record.

A Yes, I evidently sent this out.

Q What is that document, sir.

A Well, it's a document that speaks for itself, several pages, it describes the manner in which the jobs that are open that will be voted for and each one gives the elegible officers to be elected, the elegible candidates, nomination procedure and balloting procedures. It includes each one of the ports where there is an election.

Q Is that document a notice of the upcoming 1971 election?

A Yes.

Q It was sent out by you; correct?

A I sent it out.

Q What is the date of that?

A April 30, 1971.

Q Does reading that document refresh your recollection as to the fact that you sent that document out?

Do you now recall sending that document out?

A No, I don't recall. I'm sure I did. I just noticed some little -- at least a typo here. This is sent out before the -- I sent it out, there's no question. I don't recall sending it out. I undoubtedly ordered it and signed it.

Q Do you recall dictating it?

A I evidently did, but I don't recall.

Q Do you normally dictate letters that are sentout under your signature?

A Yes, unlesstheyare form letters.

Q Now, that document, Exhibit A for identification, consists of a cover letter and

material that you described earlier with regard to the offices open and the manner in which the election would take place?

A That's right.

Q Did you, yourself, compose the included material on the election and the offices?

A This is all in accordance with the International constitution as it states here. I'm sure that this was checked legally and every other way before it was sent out.

Q In other words, where it states on the page entitled, "Notice of election of Offshore Division Officers for the Port of New York," it states on that page that the Port of New York is to elect an offshore vice-president. That was in accordance with the by-laws and constitution then in effect?

A Yes.

Q On the page entitled, "Notice of election for Offshore Division Officers for the Ports of Baltimore, Philadelphia, Norfolk, Savannah and Charleston,"-- and there is no such officer -- that is an Offshore Vice-President to be elected there?

A I believe the New York --

Q Let me finish the question.

That answer is also in accordance with then-existing constitution and by-laws; is that correct?

A That is true.

Q I gather the same would be true of the Gulf area?

A Except for the Port of Galveston.

Q In other words it was according to the by-laws and constitution then in effect, that only members of the Galveston local were entitled to vote for Gulf Vice-President?

A That's correct; for the interim period, first election.

Q Now, do you recall when Exhibit A for identification was mailed out to the union membership?

A I can only go by the date that's on the top which had to be somewhere around that date.

Q Do you recall how it was mailed?

A No.

Q Do you recall whether any mailing list was used for it's mailing?

A The International mailing list, I assume.

Q What is that list?

A Well, it's entirely different now than what it was then.

Q I'm interested in 1971.

A It was the list that the locals sent in to the International office. The former constitution required -- had certain requirements prior to election that the -- the constitution, this constitution, had the requirement that they would send in to the International office the correct names and addresses of members in good standing. The International office had no record of their dues payment at that time. All dues payments were kept in the ports.

Q I'm interested in what addresses were on that list; were they the residence addresses of the members?

A Whatever address the locals had, their mailing address.

Q What about shipping address or address of the members on ships?

A We don't have that. The local doesn't have that.

Q You did not have that in 1971?

A No.

Q Does the union maintain --

A We have no idea of what ship a person was o

unless you happen to know a man personally. There is no record kept in the International office of what ship a man is on.

Q In 1971 you are stating there is no record of what ship the members were on, if any, at any given time?

A The individual member, no. We knew our members were on there, but what members, we didn't know.

Q Are such records kept today?

A You can't keep a record up to date. A man can only stay on a ship for 180 days. A record of that sort wouldn't be very much use to us. We know who the permanent masters and chief mates are; but we don't know if they are on vacation.

Q Is there a mailing list of the permanent masters and chief mates with regard to their ships?

A No.

Q Was there one in 1971?

A There was no permanent masters and chief mates as we now know them. That's been changed too. A man was a permanent master in the company. Now he's a permanent master on a ship.

Q You don't currently, I mean, the union

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does not currently keep such lists?

A Not to my knowledge. Now there might be some sort of a list kept, due to the seniority on the permanent people. But I wouldn't -- I don't think there is a list kept up to date. Because there is no way in the world of knowing whether a man is on a ship or on vacation. The company would know that.

Q Have you, during your tenure as President of the International, ever attempted to have such a list compiled or kept?

A No, I haven't.

Q Well, reflecting upon it now, do you think it would be desirable to have such lists?

MR. SCHWARTZ: For what purpose?

A Not necessarily.

MR. SCHWARTZ: Hold on. Desirable from what point of view?

MR. DANAS: From the point of view of running the affairs of the union.

MR. SCHWARTZ: I'm not going to let you ask a question like that. Running the affairs of the union from what point of view?

MR. DANAS: I'll withdraw the question.

Q You've stated that members of your union can be away for up to 180 days.

A Not necessarily away. They can be on the ship for 180 days in the Port of New York.

Q They also can be at sea for 180 days?

A No, there's no way you can be at sea 180 days. If you went for 180 days at 30 knots, you would be off the planet.

Q What is the longest that one could be at sea?

A I would say that 90 percent of our members are back in the States at least once every six weeks; at least 90 percent. There are simply no more ships making the long trips. Ships are fast and they turn around andget back home. What used to be a four-month voyage out of the East Coast now is a one-month voyage.

Q Can you guess as to what percentage of your union members are at sea at any given time?

A I could look up and see how many jobs I got and assume they are all filled and that's the number that is at sea.

Q Can you give me any idea at this point?

A Couple of thousand.

Q What percentage is that of the union membership?

A About one-third.

Q Now, in Exhibit A for identification, it's also stated that independent mailing services would be utilized by candidates; is that set forth in the union constitutional by-laws?

A I don't know if it's set forth. It's meant to be the agency that handles the election; the impartial agency that handles the election.

MR. SCHWARTZ: What are you going to do with that? Are you going to have that affixed to the deposition and then have photostats made? Otherwise, what happens when the trial starts, it gets to be a fumbling mess to find the exhibits.

MR. DANAS: We'll provide photocopies of the documents we mark here today that you don't have.

MR. SCHWARTZ: All right. You'll give it to me, so I can have it before he signs the deposition. I'm not going to let you wind up giving me a copy of a deposition without the exhibits. If yc want him to sign that deposition, I want everything

that has been discussed here. I want a copy of the exhibits. If there's any problem in getting them photostated, I will photostat them myself.

MR. DANAS: I don't want to argue about that. I recall that about an hour ago you asked Mr. O'Hanlon to do just what you are objecting to now; that is sign a deposition without appended exhibits and in fact without spaces being filled in and I didn't object to that.

MR. SCHWARTZ: I'm asking him to sign what he can so far. If there's something there he can't do because some exhibits are not available, I am not aware of that. This is a different situation. You can do what you want.

MR. DANAS: I'll agree to have all exhibits available prior to signature and if we feel that the same situation is necessary for Mr. O'Hanlon's deposition, I would expect that such documents would be provided.

MR. SCHWARTZ: Of course.

MR. DANAS: Then we are understood.

MR. SCHWARTZ: Just bear in mind in Mr. O'Hanlon's case, those documents are yours.

If you don't have copies of the documents you gave me, I will make some extra ones for you.

Q Now, Captain, you just stated that it's your understanding that the independent mailing service referred to was one and the same as the impartial balloting agency?

A Let me see it? I don't know what you are talking about.

Q Let me direct your attention to the page listing the officers for the Port of New York. On that page there is a subsection headed, "Impartial Balloting Agency".

A What is the question?

Q Well, you stated that they were one and the same. Does the reading of that subsection change your answer in any way?

A I assume that's in there. If the impartial balloting agency wanted to select any mailing agency to do the work, they could do it.

Q Doesn't Exhibit A for identification state that an independent mailing service will be used and then further down it states that the impartial balloting agency will choosewhich one is to be used?

A They chose themselves.

Q They will choose which one will be used, but they don't have a discretion as to which one will be used?

A "It will also select the independent mailing service."

Q Read up on top.

A "Distribution: All members in good standing as of 12-31-70 shall receive ballots. Ballots shall be distributed by impartial balloting agency. If a member has listed in an office of the organization or in care of an official, his last known address, a special notice will be sent informing the member that his ballot can only be obtained from the impartial balloting agency. All undelivered ballots will be returned to the impartial balloting agency."

MR. SCHWARTZ: I'm sorry. I'm lost. What is your question? The thing speaks for itself. Whatever it says it says. What's your problem?

MR. DANAS: Please let me have it.

Q On the same sheet you just referred to, there's a subsection entitled, "Distribution of campaign literature." That section reads as follows:

"An independent mailing service in New York will be used for the mailing of campaign literature by candidates. Candidates will be required to submit such documents to the mailing service along with payment of the necessary costs. Candidates will be permitted to inspect the list of members whoare elegible to receive ballots in accordance with Federal law."

Now, there is a reference there to an independent mailing service; is there not?

A Yes.

Q There's a statement there by the union that such independent mailing service shall be used for distribution of campaign literature?

A That's correct.

Q And further down: "The only involvement of the impartial balloting agency is to choose which mailing service is to be utilized."

Is that correct?

A Including themselves and that's what they did. They chose themselves.

Q I just asked you whether they had only the option to choose which one is to be used.

A They did itaccording to their rules.

MR. SCHWARTZ: Why are you arguing with him? What's the point of this? You got a document that says something. You are aruging with him about the document. He's told youapparently what they did. What else is there to discuss?

MR. DANAS: I am interested in what this letter --

MR. SCHWARTZ: Don't answer anything furth The document speaks for itself. That is enough. That document is genuine. It was sent out. It speaks for itself.

MR. DANAS: I want to know his understandi

MR. SCHWARTZ: It says exactly what it says. He's answered you.

MR. DANAS: Let me ask you: Do you agree that Exhibit A for identification sets up a mandatory use of an independent mailing service for distributior of campaign literature?

MR. SCHWARTZ: I agree it says exactly what it says. You can read that any way you want. I have my own way of reading it.

MR. DANAS: Okay.

Q You stated before, Captain, the requirements included within Exhibit A for identifi-

cation are the election of officers of the various ports and the International. These requirements were taken from the constitution and by-laws of the International union; correct?

A Yes.

Q So that the requirements that we have had on all of these pages with regard to the notice of election for the various officers of the International local ports were taken from that constitution and by-laws; is that correct?

A I believe so. Let me look at that?

Q Is that correct, sir?

A May I look at this? Whether it's the constitution or the convention, I'm not sure. In accordance with the International constitution which became effective October 1, 1970, the answer is yes.

Q Just so we are clear,--

A Right.

Q Your answer is yes, all of these requirements were pursuant to the then effective constitution and by-laws of the International union?

A Yes.

Q Can you cite, offhand, which section of the International constitution requires the use of

an independent mailing service for campaign literature distribution?

A No. No, I can't.

MR. DANAS: I would like a space left in the record. I would like you to check the then-existing constitution and/or by-laws of the International and insert the section or sections which require the use of an independent mailing service for the distribution of campaign literature; would you do that?

A Yes.

Q Now, getting back to the convention for a moment in Galveston. You state that the Internation Ballot Committee was not appointed but rather elected; correct?

A That's right.

Q By whom were those members elected?

A Convention delegates.

Q Approximately how many delegates were there to the Galveston convention?

A I'd have to look it up; 45, 50, maybe.

Q Were there nominations made for Internationa Ballot Committee?

A I believe so. That's a record too.

Q You don't recall?

A I know people were nominated, but the exact details of it, no, I don't recall. I'm sure they were nominated and seconded and elected. The record will reflect it.

MR. SCHWARTZ: Verbatim transcripts are kept of those meetings. As a matter of fact, I think you should have it in your file.

MR. DANAS: I will check the file. If we don't have it, will you give it to us?

MR. SCHWARTZ: You give me a ring.

MR. DANAS: That's the 1971 record, Galveston convention.

Q Captain, do you recall whether you yourself nominated or seconded any members or any candidates for the International Ballot Committee?

A I may have, or may not have. I don't think I did. I don't recall.

It was within my right to do it, but I don't recall.

Q Do you recall which persons were elected

to the International Ballot Committee in 1971 at Galveston?

A Two people that you mentioned here today. I'm quite sure Valensi, Nelson, some fellow from the north-west; aninland man, George Eishnhauer from New York, and I can't recall who the other one is.

Q If I mention the name Captain Reynolds and Mitchell, does that reflect --

A Yes, Reynolds from the West Coast and Price Mitchell from Mobile.

Q Eishnhauer, you said was from New York?

A Yes.

Q What about Nelson and Valensi?

A Nelson and Valensi, both from the West Coast.

Q Had any of those five gentlemen, to your knowledge, held any International executive position with the union?

A Eishnhauer has been on the Executive Committee since Columbus come over here. He has a little tugboat local of 13 members right here in New York right now; and Mitchell had been a member

of the Executive Committee formerly. I don't believe any of the -- yes -- Reynolds, I believe was a member. He could have been; I'm pretty sure he was.

MR. SCHWARTZ: What is it you want to know?

THE WITNESS:Whether they were members of the former Executive Committee.

Q I gather those you have mentioned were?

A No, Executive Officers of their locals.

MR. SCHWARTZ: No. It was an entirely different structure then.

THE WITNESS: I think Reynolds and Eishnhauer and Mitchell were former members of the Executive Committee years ago.

MR. SCHWARTZ: Let me just clarify something for you: The period of time when the Executive Committee included every single person who was an executive officer of his local? There was a period of time that the Executive Committee only included people who were elected vice-president under another procedure. There was a period of time when anybody who was a member of the local was a member of the Executive Committee.

MR. DANAS: Thank you for the clarification. Let me ask the question in another way.

Q Were any of these five gentlemen, to your knowledge, members of the International Executive Committee, after the change-over which limited membership of that committee to offshore vice-presidents or international officers?

MR. SCHWARTZ: I object to the form of the question. It's an incorrect statement. The new by-laws don't limit it in that way and that's been explained to you by Captain O'Callghan.

MR. DANAS: There hasn't yet been an election.

MR. SCHWARTZ: No . It includes not only the International President and the International Secretary-Treasurer and the Internationa Vice-President, it includes them, it includes the people, the Vice-President from the Offshore Division. Whether it includes the executive officer of any other local, that's not part of a fully formed division.

Q By the way, talking about the new set-up: You say that all offshore members will now be voted

for all offshore positions; correct?

A That's true.

Q Does that new set-up also allow all offshore members to run for any offshore position?

A Yes.

Q I f I were a member of the New York local, or the New York Division, Port of New York --

A You could run against me or you could run in San Francisco.

Q I could run in Galveston as port agent?

A Yes, indeed.

Q Would there be any requirement that you live down in Galveston?

A No.

Q Would there be any requirement that I knew about Galveston or went down there and spent some time there?

A No.

Q Same thing for nominations?

A Pardon?

Q Same thing for nominations?

A That's true. You have to be in good standing. That's all, a member in good standing. No requirement whatsoever; sea time or education or

race, creed or color.

Q As President of the International, can you give me some insight as to what the rationale of allowing a situation in which a resident of New York could fulfill the position --

MR. SCHWARTZ: I'm going to give you that answer. You ought to read your own cases. At one time we had certain clarification requirements and after a whole session with this department, we eliminated them at the request of the department, because he had some mathematical formula that you thought was not desirable. We had requirements and qualifications for different positions and different jobs and this was taxed by the Department of Labor and eventually was the subject of a judicial settlement.

As a matter of fact, I don't know how this gets to be part of this complaint and I don't know how this is relevant to any of the issues that are involved here, other than your own personal curiosity. Is there any allegation in the complaint that refers to this?

MR. DANAS: There is not, as far as I could state. However, I think you will recognize,

that if the plaintiff prevails at this trial, the matter of remedies, etc., will, in fact, to a large extent depend on what the union's current structure is like. I think in contemplation of that event, we are entitled to know -- in broad details -- what the current structure is like.

MR. SCHWARTZ: First you have to win your lawsuit.

MR. DANAS: The question will be whether you are conducting a new election or going back and conducting it under the old rules. Then there will have to be discussion whether the old rules are improper.

MR. SCHWARTZ: You are pressed for time, you are concerned about the time. Let's just talk about this case.

MR. DANAS: All right. I will try to keep it to a minimum.

Q Incidentally, one question with regard to what I just mentioned: Are you, yourself, planning to be a candidate in the 1974 election as International Vice-President?

A International Vice-President?

Q As President.

A I shall announce my candidacy at the proper time.

Q You can't give us a scoop?

MR. SCHWARTZ: It's none of your business, so let's go ahead.

Q Is there any limit as to how long somebody can serve as International President?

A Everybody has a wack at me and I have a wack at everybody else.

Q By the way, those five members of the International Ballot Committee: Had you in your capacity as International President ever worked closely with any one of those individuals?

A What do you mean by closely?

Q Well, in the same office for any extended period of time on a certain matter, such as the re-organization; did you work with any of those gentlemen on the re-organization?

A No more than I did with anybody else, probably less.

Q Was there a committee set up by yourself with regard to the re-organization?

A The entire former Executive Committee.

Q In 1971, there was an issue put forth to the

membership of your union with regard to affiliation with the ILA; is that correct?

A Yes.

Q Now, just at the outset, was there any connection between the re-organization of the union and such affiliation?

A No.

Q They were totally independent occurrences?

A Absolutely, totally. One had nothing to do with the other.

Q The re-organization was not undertaken in contemplation of a possible affiliation?

A No, it was not suggested by the ILA.

Q Pardon? Was it suggested by the ILA?

A No, they have the local situation. I don't know, they have hundreds of locals. Their structure is entirely different from ours.

Q Okay.

Did the delegates to the convention in Galveston take any action with regard to the re-organization or had it already been accomplished?

MR. SCHWARTZ: I'm trying to tell you it's all set forth in the opinion and briefs. I was completely involved in the whole thing and I can't

give you the dates and times myself. It's all been meticulously set forth.

MR. DANAS: Now, I would like to have this marked as Plaintiff's Exhibit B for identificatio

(Publication of Masters, Mates and Pilots marked Plaintiff's Exhibit B for identification.)

MR. SCHWARTZ: Let me take a look at that.

Q I'd like to ask you, Captain, if you can identify what has been marked as Plaintiff's Exhibit B for identification and if so, would you describe it, please.

MR. SCHWARTZ: This you don't have to reproduce. I have an extra copy. As a matter of fact, I'll get extra copies, enough so we'll have one for Judge Martin.

A Yes, this is a publication put out by the Masters, Mates and Pilots.

Q Is that an official publication of the International?

A Yes.

Q How often is that publication disseminated

A Very irregularly. Now, we are attempting

to get it out on a regular basis. We have been, but due to finances and lack of staff, we just haven't been able to put it out as regularly as we would like.

Q Do you recall when the magazine was disseminated for the first time?

A I believe that -- I think there was only one magazine type sent out. One or two.

Q What you hold in your hand and has been marked Exhibit B for identification is an issue of the magazine of August 1971?

A That's correct.

Q That is not the first issue, is it?

A MR. SCHWARTZ: Yes, it says so.

I think this was the first one, but let me take a look. I'm not sure myself.

It's volume 1, number 2. So I guess it must be the second one. It says, "Published quarterly, hopefully.

A As I say, we didn't have the staff; we didn't have the money and we did the best we could with the publication.

Q So it's your best recollection at this point that it was the second magazine?

A Yes, according to the information inside, it's volume 1; the second.

Q Do you recall the date of the first volume?

A No. I can find it for you and get it to you.

Q Yes, would you do that?

A Yes.

Q So that you will be providing a copy of volume 1, number 1.

A I hope we published one.

Q Now, was that magazine -- did that magazine come about at your suggestion?

MR. SCHWARTZ: He's the editor.

Q You were the editor of the magazine?

A Yes.

MR. SCHWARTZ: Right on the front it says, "T.F. O'Callghan, Editor."

MR. DANAS: I didn't notice it.

Q How did you come to be appointed editor of this magazine?

A Constitution. The constitution states the President is the editor.

Q Of what?

A The publication. The official publication.

Q Do you recall what section of the constitution?

A It's in there . It's in there. It's under the duties of the President, I believe.

Q Does the constitution mandate that the International have a magazine?

A Yes. An official publication, known as the Masters, Mates and Pilots.

Q What happened before the volume prior to this? There was no magazine; right?

A There was a magazine back in 1900. It was not like the New York Times.

Q Do you recall when the next issue subsequent to this one was released or disseminated?

A It could have been a paper form.

MR. SCHWARTZ: If you recall, don't guess.

THE WITNESS: I don't know, no.

Q Can you tell me when the last such issue of this magazine was printed and disseminated by the International?

A Magazine, as such? I don't know; I can't recall.

Q Would you check your records and inform us as to how many of these magazines, in magazine form, were printed and disseminated subsequent to Exhibit B for identification?

Q And the dates thereof?

A Yes.

MR. SCHWARTZ: Let me be sure I understand. You are not interested in newspapers. You are interested in how many magazine forms --

MR. DANAS: A magazine called: "Masters, Mates and Pilots."

MR. SCHWARTZ: You want to know how many of these magazine form publications were put out? This is number two and you have already asked for number one. You want to know what there is after number two?

MR. DANAS: Right.

MR. SCHWARTZ: We will get you all of the magazine type publications.

MR. DANAS: Now, just to clarify that. If there was a publication called, "Masters, Mates and Pilots," but it came out in newspaper form, but it was meant to come out quarterly or pursuant to the constitution, I would like to have the dates of

those.

MR. SCHWARTZ: There have been publications of the Masters, Mates and Pilots as long as I can remember and I have seen some of them going back to the year 1920. Since 1971 there have been magazine publications and after that, there were attempts at getting out on a newspaper basis and quarterly and monthly and bi-monthly. There were a whole series of them gotten out. If you tell me any item, I will be glad to look for it for you.

MR. DANAS: We are clear as to the magazine form?

MR. SCHWARTZ: Yes.

MR. DANAS: I would like to see those.

MR. SCHWARTZ: That was put out right in that particular period? I assume that would cover what you want. I don't know what you want.

Q What were your actual duties as editor of this magazine?

A Getting it together, deciding what was going to be in it.

Q Did you write it?

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A No. I wrote some of it, not all of it. I had a staff help me.

Q Who assisted you in writing Exhibit B for identification.

A A number of people.

Q Tell me their names.

A People at the school, people in the plant.

Q What school?

A Our school in Baltimore.

MR. SCHWARTZ: The thing practically speaks for itself. If you look at it, you will see some of the publication comes from the school. They are written by people down there. Some of the writing is by the administrator of the plant. Some of the stuff is written by some of the individual officers. There was an editor at the time -- I am a working trade editor whowas a member of an editorial writers' union.

MR. DANAS: Where is he listed?

MR. SCHWARTZ: Where is he listed? He was on the union -- mates' payroll, some of the union payroll.

Q Do you recall his name, Captain?

A At this time?

Q With regard to Exhibit B.

A Let me see, who was editor? We had editors, known editors. As a matter of fact, they just hired an editor a couple ofweeks ago and I don't think I've had an official editor for about three years or so. Murray Weiss was my last editor as such. I got a number of assists from this.

Q If there was an editor, a professional editor --

A There's no professional editor for this one.

Q The editor on that one, Exhibit B, was you?

A Yes.

Q You planned it; is that right?

A With other people, yes. I got a lot of people's ideas, what the best is. Something required by law, the reports of the plans is in here. I had to get that out. They have the affiliation in here, the plant administrator. The 60th convention, Gallantship Award.

Q Did you receive any additional salary for

acting as editor of the magazine?

A No.

(Recess taken.)

BY MR. DANAS: (CONTINUED)

Q Captain, with regard to volume one, number two of the Masters, Mates and Pilots Magazine: Who made the decision that this issue be published at this time?

A I did, I believe. Yes. There was a lot of news, convention news; there was a school opening and I wanted to get to the membership, the ILA affiliations.

Q Now, referring specifically to page 26 of Exhibit B for identification: At the bottom of this page there is a listing of the members of the Ballot Committee for election of International Officers and Offshore Division Officials. Under that caption the four names are listed as Captains Mitchell, Nelson, Reynolds and Eishnhauer.

I believe before you testified there was a fifth member, Captain Velensi; can you tell me why his name is not listed on page 27 of this magazine?

A No.

Q There's no reason you can think of?

A No.

Q Was Captain Velensi elected to the International Ballot Committee convention?

A Yes, I believe so. The record would show that. I believe it was.

Q I'm just asking your recollection at this examination.

A Yes, I believe he was.

Q By the way, who is J. Silver?

A Jim Silver is the assistant port agent in Baltimore.

Q He's listed as a member of the Laws and Legislation Committee, chosen at the convention.

A Yes.

Q That is a committee that Captain Sheldon also was a member of?

A He may have been, if it says so there.

Q He is listed as a member of that committee.

Now, page 26 and 27 of the exhibit, of Exhibit B contain 19 pictures of persons who I assume are delegates who attended the convention; is that correct?

A Yes, that's true. I see Marvin Schwartz is here too.

Q Was Mr. Schwartz a delegate?

A Ken Camisa, he wasn't a delegate.

Q Who is he?

A He was on my staff at that time. All the rest are delegates.

Q Could you tell me, Captain, you as editor, how you decided whose picture should appear in this spread and whose picture shouldn't appear?

A If memory serves me correctly, a poll was done on this and there was another set of pictures that should have gone in here that didn't get in. It was a cross-section of the delegates.

Q What do you mean by "Cross-section"?

A It was everybody. Who missed? There was no one in particular knocked out. It just happened that way. There was not a typo, but a mistal made in prints.

Q Whatkind of mistake?

A They omitted apage of pictures of convention delegates.

Q There was an additional page?

A Yes. If memory serves me right, we put it

in the next one.

Q When you say, "they", omitted--

A The people who put in the -- the printers that put the thing together.

Q The printers left out a whole page of pictures?

A Yes.

Q You, as the editor accepted the magazines back from them in that condition?

A I didn't notice it.

Q What did you understand, in your capacity as editor of Masters, Mates and Pilots, to be the function or purpose of the magazine?

A To give the most news I could to the membership, whatever was going on.

Q News?

A Yes.

Q What do you mean by news?

A What is happening of interest in the union; such as the convention, the school, the ILA affiliation.

Q Looking through the magazine, it would seem that the material included in the magazine is of a positive nature.

MR. SCHWARTZ: What does that mean?

MR. DANAS: Okay.

Q Is there any controversial material included in the magazine?

A If there is, I didn't mean it to be. I don't believe there is.

Q Is there anything -- and you can look throughout it if it will help refresh your recollection-- any negative material about the union or any of its locals included within the magazine?

A I don't know what you mean by, "controversial"within the local.

Q I'm talking negative.

A What do you mean by "negative"?

Q The type of information that wouldn't be ofbenefit to the union as youwould view it.

A I wouldn't put anything in there that wasn't of benefit -- if it wasn't beneficial to the union, I wouldn't put it in there; no-- if that's what your question is?

Q Even if the members of the union might be interested in reading about it, knowing about it; is that correct?

A Now, you are saying something entirely

different than what you asked before.

MR. SCHWARTZ: I'm going to object to the form of the question. Why don't you give him a specific instance. Suppose such and such were the case, would you put it in the paper?

MR. DANAS: Okay, I will do that, Mr. Schwartz.

Q Suppose the International were involved in some sort of legal problem with the Department of Labor at any given time -- strike that-- at the time that an issue of the Masters, Mates and Pilots were to be disseminated, would a frank and open discussion of the situation, assuming there were no prejudice to the Court case, be included within the magazine?

A No.

Q What about statements, positions and activities, of what we can call dissident union members or those opposed to your administration of the union?

A At that time, no.

Q What do you mean, "At that time"?

A There was no requirement and at no time was any libelous or ball-breaking stuff put into any

Masters, Mates and Pilots issue. The only time -- if you'll note under the new -- I'll bring it up to y(if you care for it. Now we put it in, it's required by the constitution. At that time it wasn't.

Q What is required by the constitution?

A To put in any letters received -- not all -- but a cross-section of letters sent in by the membership. We put it in.

Q I'm referring now to this particular issue. At that time you wouldn't have included that type of information?

A No, no.

Q Is your answer the same with regard to activities of dissidents as I have defined them, as well as letters from them?

A What kind of activities are you talking about?

Q Campaigning, speeches made to various important memberships.

A I didn't put any for myself and I didn't put any for them. No, I didn't put it in.

Q So that as of 1971 when that issue that was printed Exhibit B for identification as

printed and disseminated, I gather that you as editor didn't regard the magazine as a straight news organ; is that correct?

A I certainly did consider it a news organ. I don't know what you mean by a straight news organ.

Q Well, have we not, Captain, discussed types of news that you claim wouldn't have been included?

A That's right.

Q You agree then that all types of news wouldn't be included; right?

A That's true.

Q Only certain types of news?

A That's true.

Q And the type of news that would be included would be favorable?

A That's not true.

Q What types of unfavorable news would be included?

A I suppose it depends on how one reads it, whether it's unfavorable or not.

Q Would the problems that exist with Local 47 have been included, a full blow by blow

of the situation with Local 47; would that have been included?

A Not until it was concluded, probably.

Q It was news prior to its inclusion?

A No, it wouldn't be.

Q Between 1968 and 1971, was Captain Lloyd Sheldon, to your knowledge, active in union affairs?

A I don't know what you call active in union affairs. What do you mean by active in union affairs?

Q Did he hold any local position within the union?

A Not to my knowledge.

Q Did he from time to time voice his opinions with regard to union affairs?

A He may have.

Q In publications?

A He put out a lot of publications.

Q Speeches?

A I don't know about speeches.

Q And visits to members, local ports

A I don't know.

Q You are not aware of any such visits or

speeches during that three-year period?

A He probably did a lot of speech-making to individuals here in New York. But not to my knowledge, I don't know of any speeches he made. I was never at any of them.

Q Are you aware that there were speeches and there were --

A He put out leaflets. His name was on them.

Q In that sense he was active?

A Yes.

Q He was getting his views before as many of the members as he could?

A I don't know who he was trying to get them to. I seen them in New York.

Q He was giving them to someone?

A He may have, I don't know.

Q What about Mr. Koonce, was he active during that period as far as you know?

A I know very little about Captain Koonce, he put out literature too.

Q What about Captain Norstrand?

A I don't know much about what he put out.

Q Did you regard Captains Sheldon, Koonce and

Norstrand, based upon their activities, publications, etcetera, as newsworthy persons within the union?

A No more than any other member at that time.

Q I'm talking now as of August of '72.

A That's right.

Q Which other members of the union that come to mind were as active on an international level -- except for the incumbents -- except for yourself and your co-officeholders?

Which other union members can you name that were as active as Captain Sheldon?

A If you call putting out baseless literature active, I don't know of any quite as active as they are.

Q Were there any that you could name that were close?

A Well, there's all kinds of literature coming out signed by various committees; and it's coming out now by bushel, that I don't particularly pay any attention to. I don't keep any record of it.

Q Do you regard this literature that is coming out now as being newsworthy or something of interest to the union members?

A No.

Q You don't think union members regard that as being interesting?

A No.

Q You don't think union members want to see it?

A I don't know if they want to see it; most of them give it the heave-ho. I don't get any requests from union members for it. I do get requests for our paper.

Q Now, at the convention in Galveston, Captain Sheldon was nominated for the position of International President to oppose you; do you recall who nominated him?

A No.

Q That would appear in the records of the convention?

A Yes.

Q Do you recall nominating anyone to any position at the union, yourself?

A I could well have done it. I don't recall. I wouldn't doubt a bit that I would have done it. I don't recall.

Q Do you recall what the printing run of

Exhibit B for identification was, the number that were printed?

A There was quite a few. I couldn't say, because we sent those -- it was advertised in the school quite a bit. We sent it to members of Congress. There was a large -- maybe -- I can get the bill and check it. What the exact number was, I don't know.

Q Would you say there was approximately 15,000?

A Yes.

Q More?

A Probably ten is a good guess.

Q Do you recall how many were mailed out to union members?

A Its whole union membership, I believe, got a copy of it. They do have every publication we send out.

Q And this magazine was prepared, printed and mailed at union expense; was it not?

A Yes, indeed.

MR. SCHWARTZ: Just to clarify it: Not in its entirety; parts of the expenses are picked up by the school and part by the plant. There's a

regular allocation of expenses; but there's a substantial amount of union money involved.

Q Captain, without going into dollar amounts, can you give me an idea as to what percentage of the total cost of preparing, printing and mailing of the magazine, of Exhibit B, was borne by the International?

A No, I couldn't. It was prorated; I don't recall.

Q Was it more than fifty percent, would you guess?

A Well, I could look at it and give you a better guess.

MR. DANAS: Rather than taking the time now, Mr. Schwartz, is it agreeable that the Captain will check whatever records he needs to give us that answer?

MR. SCHWARTZ: Sure.

THE WITNESS: There's a Pilot Division in there, everybody kicked in their part; the Offshore Division, plant and school.

Q Now, after the convention in Galveston in July of 1971, what was the first thing that you yourself did with regard to your candidacy for

re-election?

A I don't know the very first thing I did. What do you mean what's the first thing I did?

MR. SCHWARTZ: I guess the first thing he did was come back up here.

Q With regard to promoting your re-election; do you recall?

A I did very little promoting. I don't recall what it was. If my memory serves me right, I sent out one or two mailings during the election. I think I sent out two.

Q After the convention in Galveston, do you know when the next time that the International Ballot Committee met?

A I could look it up for you, I don't know.

Q If I mention to you that it was in the end of August, 1971, does that refresh your recollection?

A No, it could well be, though.

Q Did you have any contact with the Ballot Committee?

A Minimum of contact.

Q During the month of August, 1971?

A I never attended any of the Ballot Committee meetings.

Q Did you have any contact with the committee from afar, by telephone, by letter?

A No. Any calling to the committee was done by the Balloting Committee itself.

Q Did they ever call you or write to you?

A If it was, it was minimal, I don't recall them writing to me. I don't recall any -- I may have, at the request of the Balloting Committee Chairman, caused something to be sent out, but I don't even recall that. Lowen handled the Ballot Committee. No, it wasn't Lowen. Was Lowen around?

MR. SCHWARTZ: If you don't recall, you don't recall.

THE WITNESS: I don't recall.

Q Your answer is you don't recall?

A I don't recall any communications. At that time, now, you see, you are talking about a time -- if I am not mistaken, it was a time when Charlie Crooks, the International Secretary, was terminally ill with cancer. If you are asking about the original one, Crooks was

out and he wasn't in the office.

Q You mean to say in August of 1971, there was no International Secretary?

A He was dying, yes. It took him six months to die of cancer.

Q When did he die?

A He died on the day after Christmas in '71, if I'm not mistaken. I would have to look that up too.

Q Prior to his death, was Captain Lowen appointed as acting secretary?

A No, he wasn't acting secretary. He was assistant to me. While Charlie Crooks was alive, he was only an assistant to me. After Charlie's death, he became the acting. I'm not sure he became the acting secretary. I think he did.

Q Prior to Captain Crooks' death, Captain Lowen was sending out letters signed, "Robert J. Lowen, Secretary-Treasurer, IOMM&P"; was he not?

A I'm sure he didn't, because Charlie was the Secretary-Treasurer and he wouldn't have signed his name as Secretary-Treasurer. I had Lowen come in because I knew him and I respected the man and I knew his ability.

Q When did he come in?

A I don't know the exact date.

Q When you say Lowen handled the Ballot Committee; what do you mean by that?

A The last one, not this one. When I say he handled it, whatever work had to be done between the International office and the Balloting Committee , he handled it.

Q What types of work would be done between the two offices?

A Furnishing the records.

Q What types of records?

A The membership records.

Q The International office would forward membership records to the --

A I'm talking about the past one, not the one of '71.

Q Let's talk only about 1971.

In 1971, what types of matters would the International deal with the International Ballot Committee about?

A The International at that time would receive the mailing address from the locals and they in turn would transmit it to the Balloting

Committee for the impartial agency.

Q Is it your testimony that with regard to such transmittal of names, lists, it was Captain Lowen who did the transmitting?

A No, I wouldn't say that. I don't recall. I could have caused my secretary to do it at that time.

Q It may have been you who did it or you may have split it?

A I know damn well I didn't do it.

Q If your secretary did it, it was done under your name and control.

A Yes.

Q Is that correct?

A Yes. I had an Administrative Assistant at that time; a staff man, Ken Camisa. He may have handled it for me at that time, I don't recall.

Q It was either done by Captain Lowen himself --

A I don't recall if Lowen was in the office at that time.

Q It may have been Captain Lowen?

A I'm not saying it may have been him.

Q Are you saying itwasn't?

A It may not have been. I don't know, I don't recall.

MR. SCHWARTZ: You are just arguing words now.

Q But it also may have been your secretary or Mr. Camisa, persons who transmitted under your direction and control, right?

A Right.

Q Now, on the occasion that your secretary or Mr. Camisa, your aide, would forward lists of names to the Ballot Committee, did you check those names or lists?

A No.

Q Did you ever see those names or lists prior to its transmittal to the Ballot Committee?

A I never got into that detail.

Q Who did?

A The lists came in -- they were certified from the locals. There was no reason -- we had nothing to check them against.

Q I'm not suggesting that you did. I'm only asking you whether anyone at the International checked those lists.

A What are we going to check them with?

Q Is your answer: "No, we did not check them"?

A That's right. We had nothing to check them with.

Q The International didn't carry a master list of its own?

A No. We had no record of dues.

Q All right.

Let's go back to Exhibit A, your letter of April 30, 1971.

Q You stated that that notice of election was mailed out to the members; is that correct?

A Yes.

Q What list was used for that mailing?

A A list that was sent in by the locals.

Q Each time the International wanted to send out a piece of mail, they had to get from the locals a mailing list?

A No. For that mailing it was probably--whatever list we had in the office at that time, which was not necessarily an updated one.

Q Let me ask you again whether it's updated or not.

Did the International maintain a mailing

list of members, which from time to time was updated by the locals?

A Supposed to have been but never was.

Q What? I didn't get that.

A It wasn't updated by the locals.

Q Right.

A The only time they had an updated list was just before an International election.

Q Forget the updating.

A Yes.

Q Did the International maintain a mailing list of members?

A Yes, for the newspapers.

Q Well, it had a list.

A Yes.

Q As these updatings were received in or about July, August of 1971, was the International list used for newspapers, et cetera, updated when the new list or the updated list came in from the locals?

A I believe they were, yes. It seemed logical, I assume they would.

Q Who on your staff did that updating of the International's list?

A Probably the secretary or one of the girls.

Q One of the girls, meaning your secretary?

A My secretary or one of the girls in the office.

Q Someone else's secretary?

A No, we have typists.

Q You have female employees?

A Yes.

Q When you say the secretary, was that Lowen?

A No. My secretary is --

Q I'm sorry.

A -- not Lowen. He's the International Secretary.

Q Did the International Secretary, whoever that might have been, have any hand in updating the International's list in or about August of 1971, based upon these updatings received from the locals?

A There was no International Secretary in 1971. It was Charlie Crooks and he was sick, so he couldn't have done it.

Q In August of '71 there was no International Secretary?

A There was, but he was sick.

Q There was no functioning International Secretary?

A That's right.

Q It couldn't have been the International Secretary that was dealing with the International Balloting Committee?

A That's right.

Q Who was dealing with the International Balloting Committee in August of '71?

A If I am not mistaken, they got whatever information they wanted from my secretary, who had whatever they needed in the way of rolls, membership rolls.

Q Your secretary --

A Probably by Camisa and members of the staff at that time.

Q Persons who were operating under your direction and control?

A That's right.

Q Now, in August of '71, in addition to mailing lists and updatings of mailing lists; what

other contacts or what other subjects were the subjects of contacts between the International Ballot Committee and the International Executive Officers?

A You have to ask that one again.

Q Besides mailing lists and updatings of mailing lists, what other information or subjects were discussed in correspondence, telephone calls or discussions between the International Ballot Committee and your office?

A None that I know of.

Q Who was to decide when ballots would be sent out by the International Ballot Committee?

A It's described in the constitution. It's got to be a 90-day ballot and the Balloting Committee sets up the dates.

Q The Balloting Committee decides when to send out the ballots?

A Yes, per constitution.

Q Did the President have any decision-making function in that regard?

A He never got into it.

Q They never asked you in August of '71, when should the ballots be sent out?

A No.

Q They never asked you as a committee?

A No.

Q A formal inquiry?

A No.

Q Did they ever ask you informally?

A No.

Q Did any individuals ask you when ballots should go out?

A No.

Q Do you know when ballots went out?

A I knew when they went out at the time, because I received one.

Q That's the first you knew that they were being sent out?

A No, I knew they were sent out, but I don't recall just how I knew it. Around the office there, the Ballot Committee were working and they were in contact with AAA. I had to give certain things to the AAA, books and what not.

Q Where was the International Ballot Committee physically located during August of 1971?

A They held their meetings at the AAA up in -- the AAA Building.

Q Did they ever utilize the International office at 39 Broadway?

A They could well have.

Q Do you recall whether they had met or used the office at 39 Broadway; I am now referring to the International Ballot Committee.

A They notified everyone when they were going to meet. The people on the -- the other candidates. If I remember correctly, they met up -- it's three years ago. I never attended any of the meetings.

MR. SCHWARTZ: Let me just say: You know, part of the difficulty in reaching back to the dates and trying to recollect precisely what happened, Exhibit B, the August 1971 issue of the Masters, Mates and Pilots, shows that Robert Lowen, International Secretary-Treasurer Lowen was already the International Secretary-Treasurer.

If you don't recall, don't say you recall. I know you are trying to give him as much information as you can. It's important not to --

THE WITNESS: Let me see that --

MR. SCHWARTZ: It's not easy to remember,

because I visited Crooks in Oregon just shortly before he died. I don't remember whether it was 1970 or '71. It must have been '70.

THE WITNESS: 1970. I'm a year off, because Lowen is now finishing up three years as Secretary-Treasurer.

Q Captain, the records will speak for themselves. I was merely trying to get your recollection.

A I never met with the Ballot Committee at any time at all.

Q I was trying to get your recollection as to whether or not Captain Lowen was appointed as interim or acting Secretary-Treasurer of the International during or prior to August of 1971.

MR. SCHWARTZ: Obviously here, in '71, at the Galveston convention, he was the International Secretary-Treasurer. Lowen was already there.

I might say for the record: Part of the problem is that we probably had about four or five -- at least five ballotings since that time on various items.

THE WITNESS: At least that.

Q Now in 1971, were you living in

New York City, in or about New York?

A No.

Q No?

A No.

Q Where were you residing then?

A '71, I was living in Virginia. I have never been a resident of New York State.

Q When you were not in New York, who ran the affairs of the union in it's office of 39 Broadway?

A If I wasn't here I would have the telephone.

Q You would have to speak to someone, who would you speak to?

A When?

Q When you were not in New York.

A I pass word to my secretary to tell whoever I wanted to talk to. Since Lowen was there, he would be the one I would pass any word to if I wanted something done.

Q What about subsequent to '71, you told me Lowen was out in San Francisco; who was running the New York office?

MR. SCHWARTZ: There's such utter

confusion. Lowen's home is in San Francisco. He works here in New York. His mother lives in New York. He spends a good deal of time here in New York. Let's not come to conclusions. He's here. He's here. People can run an office. I still run my office when I'm in New Orleans.

Q When Captain Lowen is at home in San Francisco and you are at home in Virginia, who was in the New York office?

MR. SCHWARTZ: Do you want to tell me what is the relevance of all this? How does it relate to this case?

MR. DANAS: Perhaps --

MR. SCHWARTZ: I want to know now how it relates to this case.

MR. DANAS: He has no recollection of how it worked in '71. Perhaps there's a presumption of the way it worked now if the absentee situation were the same in '71.

MR. SCHWARTZ: What's the problem?

MR. DANAS: There were many matters that were taken care of by International offices.

MR. SCHWARTZ: This lawsuit has something to do with an election. You have set forth items

in your complaint and you have set forth items in your answer to the interrogatories. Now, with regard to which item are you asking your question?

MR. DANAS: I don't think we have to specify that.

MR. SCHWARTZ: I think you do. If you have anything at all, that's either directly or indirectly related to any of the issues in this case, I'd be more than glad to answer them for you.

Q From time to time the International in August of '71 transmitted updated lists of members to the Balloting Committee; is that correct?

A Yes.

Q That was done by someone at the New York office; correct?

A Yes.

Q I asked you whether it was done by yourself.

A No.

Q I asked you whether it was done by Lowen.

A It was done by Lowen.

Q To your recollection, was Lowen in New York City throughout August of 1971?

A I don't know. I don't know.

Q What about you; were you in New York City throughout August of 1971?

A No.

Q Were you in New York City any part of August of '71 at 39 Broadway?

MR. SCHWARTZ: Do you have any recollection of what you were doing in August of 1971 at this point?

THE WITNESS: No, I don't.

MR. SCHWARTZ: Can you find out by checking the diary?

THE WITNESS: Yes.

MR. SCHWARTZ: We'll be glad to check the diaries for you.

MR. DANAS: Fine.

MR. SCHWARTZ: Let me make a note of that, before I forget.

Q Now, it was your testimony, as I recall, the International Ballot Committee didn't consult you with regard to when to send out ballots.

A No.

Q Did you transmit to them in any way

officially or unofficially, any views in that regard?

A Well, I'm probably in the record in the convention, where I said quite a bit about the oncoming elections. But I don't recall. It's in the record.

MR. SCHWARTZ: You mean like get it out as soon as he can, is that what you mean by indirect? Everybody is urged to get these out as soon as you can.

MR. DANAS: That's not what I am referring to.

Q You testified that the Ballot Committee never formally approached you and said, "When should we send out ballots," is that correct?

A That's true.

Q Did they ever formally as a body approach you and ask anything with regard to your views on when ballots should be sent out?

A They may have, but I don't recall.

Q Are there any records which would refresh your recollection as to whether they consulted with you?

A I could probably get Ballot Committee minutes and go from that.

Q But you don't recall now whether they did or not?

A No.

Q Do you recall whether any members of the Ballot Committee unofficially, individually sought your views as to when ballots should be sent out?

A I don't recall. The constitution says when the ballot goes out, and they went according to the constitution; as close as they could to the constitution.

Q Do you know whether the Ballot Committee ever officially as a group or unofficially by individual members sought Captain Lowen's advice or thoughts with regard to when ballots should be sent out?

A You'd have to find out from Lowen, I don't know.

Q Just so we are clear: Do you recall any contacts between yourself and the committee and the International Ballot Committee in August of 1971?

A I don't recall. But there's minutes and I would have to look at them. I do know I never went up to any of the --

Q What minutes are you referring to?

A Minutes of the Balloting Committee.

Q If they made a phone call to you, would that be in the minutes?

A I suppose not. There's one person that's a very good friend of mine on the Balloting Committee. He could have called me; but I don't recall anything about the Balloting Committee calling me.

Q Who was that?

A Moe Weinstein. He was on another committee; this was at the same time. Right at the same time; it was concurrent committees. We had three different ballots out and I can't separate one from the other. I think Moe was on the ILA affiliation ballot.

Q Now, in your capacity as President of the International, were you familiar with the union's constitution and by-laws?

A Yes.

Q And their requirements?

A Yes.

Q Were you familiar with Article 5, Section 8-D--

A Let me have a look at it?

Q --of the constitution?

A Let me have a look at it. I don't remember it by verbatim or by article either.

Q Would you argue with the statement that Article 5, Section 8-D --

MR. SCHWARTZ: You are paraphrasing it. Whatever the article says, there's no question about it. If what you are saying is that there's a provision that you are supposed to get it out within 90 days, as I recall there's such a provision. As I recall they didn't get it out within 90 days.

Q Article 5, Section 8-D requires, does it not, that ballots be sent out to members within 30 days after the close of nominations; is that correct?

A I believe it is, yes.

Q Nominations closed on July 28th; is that correct?

A I don't know.

MR. SCHWARTZ: He doesn't know.

Q It would have been approximately

August 28th when the constitution required that ballots be sentout; right?

A True.

Q Now, in your capacity as International President in August of 1971, were you aware of this situation?

A I recall there was a delay in sending the ballot out due to the nature of the ballot.

Q Were you aware of the constitution's requirement in August of '71?

A Of course I was.

Q Were you aware that the ballots were not sent out by August 28th?

A I know there was a delay.

Q You were aware they were not sent out by that date?

A Yes.

Q Did you as President of the International attempt in any way to have the Ballot Committee send out the ballots?

A I was aware they were working.

Q Is that your answer?

A Yes.

Q What were they working on?

A Getting the ballot out.

Q Did you in any way attempt to speed up the process?

A No.

Q Did you communicate with them your concern?

A I don't believe I did. I don't recall, but I knew they were aware of their duties as the Ballot Committee and I felt sure they would get it out as soon as they could and I knew they had a tremendous job.

MR. SCHWARTZ: Actually Camisa was working with them?

THE WITNESS: Yes.

Q Did you know in August of 1971, whether the members of the Ballot Committee were aware of the constitutional 30-day requirement?

A Yes, indeed, I'm sure that they were. I assume they were.

Q Do you know what delays or what caused the delay with regard to the Ballot Committee sending out the ballots?

A The very form of the ballot itself.

It was a tremendous ballot, it had never been sent out in this form before. It's a real number -- a great number of candidates, getting all the pictures together.

Q What pictures?

A Well, the -- all the candidates send in pictures and there had to be a newspaper requirement to go out, a supplementary newspaper gone out with the ballots, with a statement in them, with a man's picture if he wanted it. Then the ballot had to be formed up in such a way that it was correct. And different ballots to every local. It was a tremendous job.

Q Was there supplementary newspapers sent out with each ballot?

A Yes, there was a supplementary paper -- almost the size of the New York Times -- sent out, with everybody's picture, the center picture in, plus it's 400 words or 300 words that they are allowed of their own composition to accompany their picture in the paper.

MR. DANAS: Mr. Schwartz, I'd like to ask for production of the newspapers that were sent out with or accompanying the ballots.

THE WITNESS: It doesn't accompany ballots. It's sent out about the same time.

MR. SCHWARTZ: I think you have that.

MR. DANAS: We'll check our records.

MR. SCHWARTZ: Let me say this: This frequently happens. Will you just make sure before you ask us for something that you don't actually have it?

MR. DANAS: I assure you with regard to these newspapers, I myself have never seen one.

MR. SCHWARTZ: It's a common problem sometimes with the Department of Labor and the United States Attorney's Office don't exchange files. Please do search and see if you have it.

MR. DANAS: We will.

Q Now, do you know who was retained to print the ballots for international and local elections?

A The Balloting Committee obtained a firm, Wirth-Strahler and Sons, of Baltimore.

Q Is that Wirth-Strahler and Sons?

A Yes.

Q That's a printing firm in Baltimore, Maryland?

A Yes.

Q That's your home port area or home town?

A It's not my home town or my home port either, either one.

Q You were a member of Local 14 and it emcompassed Baltimore?

A Yes.

Q Do you know how that printing firm was chosen?

A The Balloting Committee chose them.

Q Were you consulted or chosen in any way?

A No.

Q Did you suggest that this firm be used?

A No.

Q Had you in your capacity as President of the International ever given any printing work to that concern before?

A Yes.

Q When for the first time did you retain them?

A When I was the Secretary-Treasurer in Baltimore.

Q About when?

A 1958.

Q How did they come to your attention then?

A They were the -- Strahler bought out from another printer who had the work for Local 14, before I got there. They do -- their main work is all of the trade unions in Baltimore is their main customers.

Q Did this printing firm ever do any work for you personally?

A I believe they did. I'd have to check.

MR. SCHWARTZ: What kind of work?

THE WITNESS: I may have had them write out some of my campaign stuff, but I am not sure. I think I did.

Q Would that have been prior to 1971?

A Yes.

Q And subsequent to 1971?

A I'd have to check it, I don't recall.

MR. SCHWARTZ: We are talking about something that he would have paid for individually?

THE WITNESS: Myself, absolutely, yes.

MR. DANAS: I assume so, yes.

MR. SCHWARTZ: Yes.

THE WITNESS: I'm sure-- yes, I would

say they did printing for me in 19 -- some of my -- I think practically all of my campaigns for office, they did a certain amount of printing for me.

Q You ran for President of the International in 1971?

A Yes.

Q You had campaign literature printed?

A That's right.

Q Did they do the printing?

A I believe so. I'd have to check it. I think they did.

Q But, we're clear, are we not, that the mandate of the constitution with regard to the 30-day limit was not met by these ballots?

A That's true.

Q Just also for clarity: In August of 1971, did anyone, any one member of the International Ballot Committee or the Ballot Committee as a group, speak to you or contact you with regard to the delay or the problems that were arising?

A I don't recall. As I say, they were working with Lowen at that time and not with me.

Q Did the International Ballot Committee

have any budget for the conducting of the '71 election?

A There's no budget for an election.

Q What does that mean?

A There isn't any budget. Whatever the AAA, if they are nominated by the convention, elected by the convention to be the -- to supervise the election, you pay them their fee. We don't set their fee, they set it.

MR. DANAS: I would like to have this document marked as Exhibit C for identification.

(Annual report, Form L.M.-2, marked Plaintiff's Exhibit C for identification.)

MR. SCHWARTZ: May I see that, please?

MR. DANAS: Yes.

Q Captain, I'd like to show you what has just been marked Exhibit C for identification and ask you whether you can identify it and if so would you describe it, please.

A It's the L.M.-2 form.

MR. SCHWARTZ: What is the year?

THE WITNESS: The year is 1971.

Q What is an L.M.-2 form?

A It's an annual report required by the

government.

Q That's a document filed with the Department of Labor?

A Yes.

Q Reporting the activities or some of the activities of the International organization of Masters, Mates and Pilots for the year 1971; is that your signature on the front page?

A Yes.

Q May I have that, please?

A Yes.

Q I'd like to direct your attention to the fifth page of this report, under the column, "Disbursement". There's an entry for election and ballot cost of $48,663; is that correct?

A It was made up by my auditor, a certified public auditor; I would say it was correct, yes.

Q Can you further break down that figure with regard to how the $48,000 was spent?

A I can get it for you.

Q Would you do that?

MR. DANAS: We'll leave a space in the

record for that information.

MR. SCHWARTZ: Part of your problem here with these elections is created by just this kind of situation and you'll find that the breakdown of that is such that you have a rather enormous bill each time from the independent balloting agencies. I don't know if you are aware of the kind of bills that have become involved.

MR. DANAS: I am merely looking for a breakdown and if it was all attributable to the triple A costs, so be it.

MR. SCHWARTZ: What's the relevance of that in this case?

MR. DANAS: We do have allegations with regard to theuse of union funds.

MR. SCHWARTZ: For what?

MR. DANAS: With regard to the election?

MR. SCHWARTZ: Yes.

MR. DANAS: We are entitled to know the costs and disbursements of the union with regard to the election. We are not going into any other phase of the union's activities.

MR. SCHWARTZ: Okay.

Q Now, as President of the International in 1971, were you the disbursing officer of the union fund?

A No.

Q Who was?

A The International Secretary-Treasurer, Robert Lowen.

Q Now, earlier in the day, we referred to the affiliation situation between the ILA and your union; do you recall that?

A Yes indeed.

Q Now, would you state briefly the history of the affiliation situation prior to and up to the 1971 convention in Galveston?

MR. SCHWARTZ: Hold it a minute. I feel that's just too general a question in view of the allegations in this case. I suppose some part of the affiliation is relevant at least insofar as the publications are concerned. Now, what's the relevance of the general description of what took place with regard to the ILA?

MR. DANAS: I'll be more specific. Maybe it will make it faster.

Q What is your recollection as to the first time that the affiliation was discussed at the union officer level?

A What union officer?

Q International officers.

A What International officers?

Q The International officers of the Masters, Mates and Pilots; when for the first time did any of the International officers discuss the possible affiliation of the ILA with the International organization of Masters, Mates and Pilots?

A The first time that I did or the first time that anybody did?

Q The first time you heard about it.

A I believe there was discussion on that for I don't know how many years and not only the ILA but other unions. So I don't know when the -- it was first discussed. I couldn't give the date.

Q All right, let's bring it further up.

Q When was a decision made to put an affiliation to a union vote?

MR. SCHWARTZ: Fair enough, that's certainly relevant. Okay.

A Let me look at that?

MR SCHWARTZ: Do you have any

independent recollection?

THE WITNESS: I guess it was in early '71. Maybe it was '70, I don't recall the exact date that it was discussed.

Q Do you recall where the International Union's 1970 convention was held?

A New Orleans, I believe.

MR. SCHWARTZ: I don't remember myself. I attend them all. Probably New Orleans.

Q Do you recall whether the matter of the affiliation of the ILA and the IOMM&P was discussed at the 1970 convention in New Orleans?

A I know that Gleason and Bowers were guests down there.

Q That's Teddy Gleason, the President of the ILA?

A Yes.

Q Who's Bowers?

A He's Executive Vice-President.

Q Of the ILA?

A Yes. They were guests at the -- you have to get the record and see if it was discussed at the convention.

MR. DANAS: I'd like you to provide that.

Q In any event, it must have been discussed between the two conventions; right?

A Yes.

Q With regard to the affiliation, what type of action was taken by the delegates to the 1971 Galveston convention?

A I have to refresh my memory from the minutes.

Q Do you recall whether it was discussed in Galveston?

A To tell you truthfully, I don't know if it was discussed at an Executive Board Meeting or if it was discussed at the convention. Certainly it was discussed at one of them. I'm sure that they took action -- either the convention took action or the Executive Board took action before we put the ballot out.

Q Under the International Union's constitution as it then existed, was there a requirement that the convention take any action prior to a submission to the membership?

A Not necessarily; not necessarily. The Executive Board can send out a ballot.

Q So, as you sit here today, you don't

recall whether it was the convention or the Executive Board --

A No, I couldn't say.

Q -- that decided to put it to the vote of the membership?

A We had so many ballots. I can't recollect which came from where. We have had more ballots out in the last six or seven years -- more than enough.

Q In 1971, were you personally for the affiliation?

A I absolutely was. I was probably the driving force behind the affiliation.

Q Did you speak in favor of it at the convention?

A If I spoke about it, I spoke in favor of it. It was not a popular issue either, because the same people who put out this literature, the people that you mentioned, out on the West Coast they put out literature that I had joined the Mafia. Down in the south they said I was a nigger lover. Down here in the east -- down south where 95% of the ILA are blacks and 95% of the ILP were whites, that's where I was the nigger lover.

Down south there is a certain amount of distrust. I was in the Mafia.

Q When you say "they" who are these people?

A I'm talking about the people who put out the committee or democracy. These active people in the union that you speak about that I don't put in the paper.

Q I mentioned three persons before; were they putting out all of this literature?

A They are committees one day and the next day they are individuals.

Q We discussed Captain Sheldon.

A He's head of a committee. I don't know which committee.

Q Captains Sheldon, Koonce and Norstrand.

A They are all committees.

Q Are you saying they put out all of the literature you just referred to?

A Not all,part and parcel.

Q Do you have copies in your possession of distributed literature that accused you of having joined the Mafia?

A Godfather, it was put out; a real nice one by the West Coast Mates Committee.

Q Would you give me a copy of that?

A I'll try and find it for you.

It happens down south, I have a black instructor at my school and he's one of my best instructors and there's a big circle pointed around him with a no and a big no for O'Callghan.

Q Do you have a copy of the literature that referred to you as a nigger lover?

A I believe I have. I'll check it out, yes.

Q I'd like to have a copy of that also.

A I won't say I still got it. I have an awful bunch of junk down there.

Q That's not something you are called every day.

A I was called it plenty, then at that time.

Q I'd like also along with each copy to have stated the person or persons --

MR. SCHWARTZ: Hold on a minute. He's volunteering. Not that I am not willing, what's the relevance of this stuff outside of your own curiosity?

MR. DANAS: We have a situation with regard to dissident incumbents, et cetera. We may be involved with an issue of state of mind; motivation

for certain action being taken at the election period. I'm convinced it's material we should have before us.

MR. SCHWARTZ: Tell me what it relates to in the complaint directly or indirectly.

MR. DANAS: I have just stated what it relates to.

MR. SCHWARTZ: I don't know of anything that talks about people's state of mind in your complaint.

MR. DANAS: We have at issue certain allegations with regard to campaign literature.

MR. SCHWARTZ: Which?

MR. DANAS: If you are going to take the position that all of this is totally irrelevant to anything at issue in this case, I'll take it under consideration now. I won't press production. But I will say --

MR. SCHWARTZ: I'd like to know what your position is.

MR. DANAS: If we don't get production, I will move that no reference to any of this adverse publicity or literature be made at the trial.

MR. SCHWARTZ: You can do anything you want and I'm not making any deals with you. I'm asking what the relevance is here. As I understand the rules, you can have anything that's relevant to the complaint or that reasonably can be held to lead you to material that is relevant. I would like to know how this falls into either one of those categories.

MR. DANAS: I'll state it simply and you'll give me your position and if we don't agree--

MR. SCHWARTZ: Maybe you'll convince me.

MR. DANAS: All I'm saying is that whatever conclusion we come to I want to be consistent. If it's not relevant to be produced, it's not relevant to be brought up at trial. The relevance as I see it is that there are many factors which I believe and which I think would sustain a basis for a state of mind in the election of 1971. Now, a state of mind --

MR. SCHWARTZ: Whose state of mind and with regard to what?

MR. DANAS: The state of mind would have to do with motivation, reasons and viewpoint --

MR. SCHWARTZ: For doing what?

MR. DANAS: Regarding the election; regarding the dissemination of certain materials; regarding one's -- how one views the opposition; how much of a threat one views the opposition to be. It might bear on the opening up of mailing lists. There are a lot of factors which were in control of the union leadership. I think it's relevant to know what their state of mind was.

MR. SCHWARTZ: Their general state of mind isn't any of your business at all, unless it relates to some specific item. Now, if what you are saying is that if the longshore issue was unpopular and if, in fact, it was unpopular and therefore any publicity that was done with regard to Sheldon and Gleason helped, rather than hurt Sheldon, well, all right, that I understand. But I assume that's not your position?

MR. DANAS: That's not the position.

MR. SCHWARTZ: Then you are going to have to express something like that. I can understand that; I can articulate that. Suppose you do the same for me.

MR. DANAS: With regard to the Watergate

situation --

MR. SCHWARTZ: You have no concession from me that you are going to get any of this material until you explain in some way how it's material to your complaint.

MR. DANAS: I will take it underadvisement: if there has to be a continuation of this deposition, we'll try to reach a conclusion then.

MR. SCHWARTZ: I'll accept it from you in the form of a phone call.

MR. DANAS: The only thing, if it's not produced, I am going to strenuously object to any reference of it at trial.

MR. SCHWARTZ: It may be relevant for my purposes in what I want to do, but I don't know what you want to do.

MR. DANAS: Okay.

Q Why do you say, Captain, that the affiliation issue -- pro-affiliation -- was not a popular one; what leads you to say that?

A There was such a change. I had changed the structure of the union and now it was suggestion, not only suggestion, but I was pushing for an affiliation with another international union

and we would lose a certain amount of our status eventually. We would become part of the ILA and not an independent organization of Masters, Mates and Pilots.

Q What leads you to believe that the union membership felt this way?

A I figure a lot of them didn't understand the real purpose and why we had to do it.

MR. SCHWARTZ: What he is saying: Did anybody say anything to you about, did you get any feedback or what?

THE WITNESS: Yes, I got -- depends on where -- I got quite a few letters on it.

Q The affiliation issue carried; did it not?

A Yes, it did.

Q It was unpopular?

A Yes.

Q At what time?

A When the ballot was out.

Q When was the ballot out?

A Don't ask me. That was another one of the ballots. I don't know the exact dates of the ballots.

Q Approximately when was it out?

MR. SCHWARTZ: Did it go out before or after the election?

THE WITNESS: Before the election? Wait a minute. I absolutely can't tell you. I'm not sure just whether it was before the election or after.

Q Whenever it went out, who decided when it was to go out?

A This has got nothing to do with -- it's not spelled out who decided. I suppose either the International sub-committee or maybe the International executive committee decided the date on that. That's not spelled out in our constitution.

Q Did you decide the date?

A I had part in deciding, certainly.

Q Do you recall what date it was?

A No, not now I can't.

Q Does August 10, 1971 refresh your recollection as to when ballots on the referendum was sent out?

A It might have been.

Q What were your views as to when they

should be sent out at that time?

A It had to be a 90-day referendum.

Q 90 days from when?

A From the time it was sent out; it had to be a 90-day voting period.

Q The voting had to be closed 90 days after it was sent out; right?

A Yes.

Q I'm asking you what your views were as to when they were sent out to begin the 90-day period.

A I don't recall now.

I didn't have any particular choice of time that I can recall. As long as it was a 90-day ballot and a reasonable time after the action was taken.

Q O kay.

What action was taken?

A Whether it was the International sub-committee-- I would imagine it would have been by either the convention or the -- I wouldn't think itwas the convention. It must have been the International executive committee.

Q Well, --

A I'd have to look it up; I don't recall.

Q You have stated this was a momentous change.

A It was.

Q It radically reconstructed the union?

A That didn't restructure the union.

Q It was radical with regard to union stature and possibly being absorbed by a larger body?

A Yes.

Q Something of that moment you don't recall?

A No.

Q You do recall you were all for it?

A I'm a son of a gun on birthdays and my wedding and anniversary too.

Q You were all for it?

A Yes.

Q What were your reasons?

MR. SCHWARTZ: That's totally irrelevant.

Q But you were aware that it was an unpopular issue with the membership?

A It wasn't the most popular issue that

ever came up.

Q I think you called it unpopular before.

A Yes.

Q Do you recall the results of the referendum?

A I think a couple of hundred, three hundred, something of that sort

Q Affiliation won by about three hundred?

A Yes.

Q Do you recall how many total votes were cast?

A There was a big vote. Somewhere -- one of the biggest votes we ever had, if I remember correctly.

Q All right.

With regard to the affiliation situation, do you recall whether it was yourself that first brought it up to the IOMM&P; did you personally raise the issue for the first time?

A Affiliation with the ILA, yes. It was methat brought it up. I don't recall just what body. I undoubtedly spoke to several people about it.

Q Approximately when did you do that?

A I'd have to look up -- I know I got it --

I have to look up another date. I can't tell you the dates.

Q What records would refresh your recollection as to when you first brought up the ILA-IOMM&P affiliation?

MR. SCHWARTZ: That would have to be brought up at executive board meetings and committee meetings.

MR. DANAS: That would be the first official time it was brought up, at an executive committee meeting or some other meetings and you will provide the dates?

MR. SCHWARTZ: I will look for that.

MR. DANAS: Okay.

Q Do you recall, Captain, whether prior to whenever you brought it up in a meeting, you began informally to mention it to your --

MR. SCHWARTZ: What is the relevance of this?

MR. DANAS: With regard to the time when this was brought up.

MR. SCHWARTZ: You mean the time of the --

MR. DANAS: Of the referendum.

MR. SCHWARTZ: In other words, about how

long before the referendum went out would be the earliest he remembered about bringing it up?

MR. DANAS: The first time it was brought up officially?

MR. SCHWARTZ: Prior to the referendum going out.

MR. DANAS: I want to know the first time prior to the referendum going out that he officially brought it up at an executive committee. I'd like to know also when he brought it up unofficially with any union officials and if so, to whom and approximately when.

Q Whenever you brought this up, was that subsequent to meetings with Teddy Gleason, between yourself and Teddy Gleason?

A I talked it over with Gleason and Bowers to see what the conditions of such an affiliation would be before I brought it up to anybody else.

Q All right.

A I want to ask counsel a question.

MR. DANAS: You want to go off the record?

MR. SCHWARTZ: Yes.

(Discussion off the record.)

Q After conferring with counsel, do you have anything to add on my prior question?

A Not a thing.

Q Do you recall whether it was yourself who approached Mr. Gleason or Mr. Gleason or one of his representatives who approached you or one of your cohorts with regard to the affiliation?

A I approached Gleason.

Q Approximately when was that?

A Probably a year before this went out sometime.

Q Mid-'70?

A Probably about a year before the ballot went out.

Q Do you recall whether you approached him prior to the New Orleans convention in mid-1970?

A I don't recall.

Q Well, do you recall whether that was one of the reasons that he was in attendance at the convention?

A He or John Bowers have always been invited -- at least invited to our conventions. I think that they had -- I think he had spoken at conventions of the Masters, Mates and Pilots.

Q So that it's fair to say, is it not, within the IOMM&P, this affiliation thing was your baby; you originated it and you pushed it?

A Yes, I did, I was the main force behind it; no question on that.

Q That was in the face of the fact that you felt it was an unpopular issue before the union membership?

A Yes.

Q That was in an election year when you were up for re-election?

A Yes.

Q You must have really believed in it.

A I did.

MR. DANAS: Mr. Schwartz, do you still object to an inquiry as to what effect or what positive effects he felt would run to the IOMM&P to affiliation?

MR. SCHWARTZ: That I said before and you said no. If that's your object as to whether or not it made any difference? My argument, frankly, in this respect is. I don't see what any of this publicity did but help insofar as Sheldon was concerned. If there's any question about this --

MR. DANAS: I'm not conceding that at all.

MR. SCHWARTZ: There were all kinds of urgings that it not be sent out at the time. Many people including myself urged him not to send it out.

Q But despite these urgings, you did in fact send out the ballot?

A That's right.

Q What reason or reasons did you personally have for disregarding these urgings that you received?

A I thought it was a pro-trade union thing to do.

Q Could you expand upon that?

A I thought it meant the survival of the Masters, Mates and Pilots.

Q In early 1971, did you regard the IOMM&P as in dire straits?

A Yes, indeed. I regarded them in dire straits ten years ago.

Q Referring to early '71, did you regard the union as being on a month to month basis without affiliation?

A What do you mean by a month to month basis?

Q Was it in danger of going under, out of existence?

A We were in real danger.

Q Of what?

A Of attack from any number of people.

Q What type of attack?

A The waterfront is a jungle.

Q Who were some of the animals in the jungle?

A All the other unions; maritime unions. You know, just as we had just such a vast upheaval and change in the Masters, Mates and Pilots, so has the industry, the very nature of the ships and who is going to be on the ships. Everybody is out to grab everybody else's job.

Q Did you fear --

A Loss of job and loss of contracts, yes.

Q How did you feel affiliation with the ILA would prevent that?

A You don't know much about the waterfront.

Q Inform me.

A If I'm part of the ILA, I got a little more horsepower.

Q What does that mean, muscle?

A Not muscle.

Q Political muscle, financial muscle?

A If I put up a picket line now, no longshoreman goes through it on any coast.

Before, there would be a big discussion and decision in the port, ILA doesn't walk through it's own picket line, you know.

Q What unions did you feel were a threat to your union?

A Mainly the SIU.

Q What is that?

A Seafarers International Union and its satellites.

Q Despite the possible adverse effects on your candidacy for re-election, it was in the interest of the union to have this affiliation issue put before it?

A I was thoroughly convinced there wouldn't have been a union if I wouldn't have done it. You wouldn't have had to have an election then. It would have been someplace else.

Q Apparently from what you stated before, the other members or many of the other members or most of the other members don't feel the same.

A They don't realize what's going on. You have to be up in the driver's seat. You can't know what's going on if you are out in the middle of the ocean; even if you are ashore. Unless you're where the blows are being thrown, you don't know what's going on. You have to be in the ring to get the effects of the blows.

Q You were risking your position as President on this issue?

A Absolutely.

Q Besides Mr. Schwartz, you stated, who else of any moment within the union was trying to advise you not to put this before the members?

A Most of the people that were running for a job, for election.

Q Lowen?

A No, Lowen didn't.

Q Who was? Caldwell?

A Caldwell is from the West Coast. The

West Coast don't care too much for the ILA Labor.

Q Who cared at the International level, besides Mr. Schwartz, not to put this before the union membership in an election year?

A Like any union there's people that are very important in the union, and carry a lot of weight and several of them did. They didn't think it was a good issue to put out at this time and that went for most of them.

Q You didn't feel this issue could wait until January of '72?

A No, I didn't.

Q December of '72, to have the ballots sent out?

A No.

Q Why not?

A It was my conviction that it couldn't wait.

Q What was that based upon?

A On many things that happened on the waterfront.

Q Was there anyone incident that occurred in 1971 that pushed you over the line, that scared you to such a sufficient degree to put it before the

voters now?

A It didn't scare me.

Q It concerned you.

A Several things.

Q Like what?

A Ships coming out being built that I wasn't contacted about quarters. Always before, I was contacted about what the quarters on the ship were. I know somebody was being contacted. It wasn't me.

Q What else?

A I had picket lines totally disregarded by the other unions.

Q Did that occur in 1971?

A Yes.

Q When?

A Early.

Q Where?

A All over the country.

Q In New York?

A New York was one of the places. It happened all over. I had another union try to take a line away from me, a major steamship line.

Q What else?

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A That's enough. If you see one hundred jobs go down the drain, the way the ships are declining you don't need anything else to get you concerned.

Q You referred to the ILA's muscle?

A I didn't say muscle , you said it.

Q You referred to their power, right, their stature?

What is it about the ILA you felt would protect the union?

A If I am ILA, they are not going to go through my picket line.

Q What about the new ships being built, how would you be helped there?

A Teddy Gleason, being President of the ILA is certainly somebody to be reckoned with on the waterfront.

Q Is he respected on the waterfront?

A Yes, most respected in the United States.

Q Within the union?

A Within the union and within the industry.

Q To management as well?

A Yes, indeed.

Q If Teddy Gleason was such a well-respected

man, how do you account for the preponderance of negative feelings that you saw among your union in the affiliation with his union?

A Mymembership, in this particular thing, I'm about 99% white and the ILA is probably about 70% black. In many places the difference in the income of the two -- of my men as opposed to a longshoreman, it's easy --as they had in many places, go to my members; "What do you want to do? Want to join the Mafia? They got their lieutenants down south, colored longshoreman working with the hold. Is that your brother down there? Is that what you are going to join?" It wasn't an easy thing to sell in the face of getting elected, but I did it.

Q How did you do it?

A The pension, welfare and their pork chops was at stake; mine too.

Q When and how did you tell them that?

A Most of it was done when I told my own people that were against putting it out, that we have got to do this.

Q I'm talking now about the general membership.

A I think the general membership when they

thought it over, these things didn't escape by them --

Q How did you put your ideas with regard to the benefits of affiliation before the general membership of the union?

A It was a pretty hard thing to spell out.

Q Just overnight everyone realized the benefits; is that right?

A I didn't say they did.

Q What caused them to change from the negative feeling you claim they had to voting for it?

A I say a negative feeling, because with the intelligence of my members, they should have voted this up 98%, not 35 or 60, that's why I say it was negative.

Q Before you put this up to a vote, did you feel that it was going to win or lose before your members, the affiliation?

A I didn't know, I truthfully didn't know. It was a chance I took.

Q You felt there was a great resistance among the membership?

A I knew there was.

Q Yet they voted for it. I want to know

what changed their mind.

A They didn't vote for it the way they should have.

Q What changed the minds of the ones that voted for it?

A They probably would have voted for it anyhow.

Q A majority voted for it?

A Yes.

Q If they would have voted before, there wasn't this tremendous negative feeling?

A As I say, there wasn't a tremendous negative feeling.

Q A majority wanted it?

A That was a result of the ballot.

Q It was prior?

A I didn't know that.

Q What did you think?

A I knew it was going to be close. I figured it was going to be close. You know, you don't have to be a magician or any kind of philosopher to maybe see that a skipper of a ship making $40,000 a year and more, is going to vote to go with the ILA. I don't know.

Q It's clear, Captain, is it not, that you were the one who determined the time of this whole affiliation issue, putting it before the voters?

A Events determined that, not me.

Q Somebody was sending out the ballots August 19th or 20th; that was you.

A Yes.

Q By August 19th or August 20th, you knew that the International Ballot Committee was having problems with the ballots for election, didn't you.

A I wouldn't call them problems.

Q They were running behind time and they weren't going to come within the 30-day constitutional requirement.

A I assumed they would.

Q You stated before you knew it.

A I knew they were having problems.

Q You knew they weren't going to make the August 28th deadline?

A When it gotto August 28th, I knew they weren't.

Q When it got to August 20th, you knew

they wouldn't?

A I knew they were going to be late.

Q Despite that, you decided to send out the referendum ballots, besides everything else you described to us before, on August 20th?

A Yes.

Q Before you sent out the ballots on the affiliation, did you know that you were going to send out pro-affiliation material?

A I didn't take that into consideration.

Q I just want to know, if you knew that you would.

MR. SCHWARTZ: Let me see if I understand the question: You mean before they sent out the ballot on affiliation, he planned on sending out literature to support the ballot?

MR. DANAS: To support affiliation.

A Certainly, I was going to let the membership know how I felt about it.

Q At that point Teddy Gleason was also for affiliation?

A We got together and accepted the terms.

Q You knew he wanted affiliation?

A I wanted it more than he did. He

2678a

didn't need me worth a damn.

Q He wanted it?

A Not necessarily; he agreed with it.

Q Was he more than neutral?

A He was agreeable, put it that way. I don't think he was looking for us.

Q Prior to sending out the ballots on the referendum of affiliation, did you have an idea as to what form the pro-affiliation campaign material would take?

A It's very possible I talked quite a bit about it.

Q You knew that that material would link your name and Teddy Gleason's name?

A Everyone certainly knows I was talking. I don't know what you mean by linking me with Teddy Gleason.

Q They would appear on the same documents.

A I don't know how much thought I gave it.

Q You knew that?

A He and I would have to sign the document; yes, I knew that.

Q You knew that your names would appear on the campaign material or affiliation?

MR. SCHWARTZ: What do you mean appear; in the body of it or as a signature?

MR. DANAS: In the body of it.

MR. SCHWARTZ: His name and O'Callghan's names would be mentioned.

Q Did you know that?

MR. SCHWARTZ: I don't know how they could talk about it without mentioning the two names.

A I mentioned Gleason's name and I signed it.

Q You knew both names would be mentioned?

A My name was on it and I mentioned Gleason too, yes.

Q You knew that Gleason would be making comment in direct quotes or not in direct quote favorable to the affiliation?

A No.

Q Didn't you assume he would give you some help in having the membership vote on it favorably?

A How can he give me any help on my membership voting?

Q He could appear and make statements pro the affiliation, campaign.

A I'm sure he could.

Q In fact he did that?

A Not in any campaign literature, as I recall.

Q Did he do so with any material put before the IOMM&P members?

A He spoke at the convention.

Q I'm not talking about the convention --

A To my knowledge, he didn't put any out at all. If he did, I don't know about it.

Q In the material that you sentout after the referendum ballots were distributed, Teddy Gleason was quoted in that material, was he not?

A Yes.

Q He was quoted as being favorable toward the affiliation.

A I quoted him whatever he said at the convention.

Q It turned out to be favorable?

A Right.

Q If it was unfavorable there would be no referendum.

A Whatever I put out I put out and I signed my name to it.

Q I'm asking you before the ballots were sent out, didn't you have an idea that the material you would send out would take the form that it in fact took?

A I didn't plan anything. I was out to put out a letter to the membership and I did that to give my views and let them know that I was totally for affiliation with the IIA.

Q It's true, is it not, that you wanted to send out to your members, more material which would encompass more than setting forth your views; you wanted to convince them to vote for the affiliation.

A I figured my letter did that.

Q That's your intent; isn't that what you wanted to do?

A I wanted the members to vote, yes.

Q You realized that Teddy Gleason had a certain stature in the industry, you just stated that.

A Right. He does have a certain stature.

Q You knew his presence would aid the affiliation literature?

2682a

A No, I didn't.

Q Did you think it would hurt the affiliation?

A On the West Coast, definitely it would hurt.

Q What about in general?

A In the south it would hurt. I had hoped that I had enough members who would realize what was going on, to vote yes. If anything, it's touch and go whether the mentioning of his name actually did me any good.

Q Did you ask Gleason whether you could quote him or put in substance anything he stated?

A No.

Q You just sent it out?

A Yes. I figured if I could get it out the court reported thing, I could use it.

Q You didn't feel it would be proper to ask him as to whether his statements could be used?

A If anyone goes to a convention and says anything for the record, the convention has a right to use it, I would assume.

Q Before sending out the ballots, you knew you would use some of the quotes of the convention?

A No.

Q Hasn't he spoken for the affiliation?

A I believe he did.

Q So in August you knew he made those statements and they were available to use; right?

A I knew he had made the statements.

Q You knew they were available because you didn't feel you had to ask him?

A I didn't ask him. I didn't ask him to use it. I will say that. Maybe he objected to it. He never mentioned it.

Q He knew they existed, his statements?

A I don't know if he knew it or not.

Q You?

A I knew they existed, yes.

MR. DANAS: I think we are adjourning for the day at this point.

Mr. Schwartz, have you discussed with the Captain when we can continue this deposition?

MR. SCHWARTZ: I just don't know, because it's not only his schedule, it's mine now. You want Lowen and you want to start at 12:30 tomorrow.

MR. DANAS: I suggested 1:30 and you

suggested 12:30 and I agreed to it.

MR. SCHWARTZ: 1:30 is all right with me as long as we don't stop for lunch.

MR. DANAS: Let's not subject the reporter and all others; and the Captain may want lunch. So we are starting at 12:30. I want to know, given the schedule of June 17th trial --

MR. SCHWARTZ: I don't know right now. What dates are you available?

MR. DANAS: [illegible]e available all next week, any day next week.

MR. SCHWARTZ: There's no sense making those plans, if you want to take Lowen.

MR. DANAS: I would figure that Captain Lowen's deposition will not be finished tomorrow. So that next week, at least before our end, we have a continuation of Captain O'Callghan and of Captain Lowen.

MR. SCHWARTZ: The first three days of next week, I have arbitration that has been fixed for well over a month. They are fixed for Tuesday, Wednesday and Thursday and involve people coming in from out of town. I can't do it on those days. Friday we can pick up Lowen and O'Callghan or whatever

The following week I am open.

MR. DANAS: What about Mr. Epstein, is he available for nextweek?

MR. SCHWARTZ: He's not going to try this case, I am.

MR. DANAS: This is for protective reasons, I guess, at a deposition. Does that preclude his presence, that you will try the case?

MR. SCHWARTZ: You adjust your schedule. Just because I have other people in my office who work there -- he has commitments too, I want to attend to these, okay?

MR. DANAS: All I am saying, we have problems of reproducing the record and we have a June 17th trial date and I think it's incumbent upon both of us to get this done as speedily as possible.

MR. SCHWARTZ: I can't control how long it takes you to do something.

MR. DANAS: I'd like you to check if you can, either tonight or tomorrow morning, with Nelson and Valensi.

MR. SCHWARTZ: You are going to have to tell me when you want to go out there.

MR. DANAS: Find out if they are available the first three days of next week.

MR. SCHWARTZ: Next week I can't go. You want to do these on Friday?

MR. DANAS: Do we have a whole week knocked out of commission?

MR. SCHWARTZ: On Tuesday, Wednesday and Thursday I can't work with you.

As far as the following week is concerned, I can't imagine that you can't get it done the week of the 3rd.

MR. DANAS: Let's adjourn for today and we can talk about scheduling again tomorrow.

MR. SCHWARTZ: We are going to continue until we get done. Other than the three days next week, my schedule is open. Now, you want to get through, we'll get through and I'll continue to work with you. You want to get a

court reporter and work at night, we can work at night.

MR. DANAS: Okay. We'll see you tomorrow at 12:30.

(Time noted: 5:30 P.M.)

THOMAS F. O'CALLGHAN

Subscribed and sworn to
before me this ___ day,
_____, 1974.

NOTARY PUBLIC

I N D E X

WITNESS

THOMAS F. O'CALLGHAN

EXAMINATION BY:	PAGE
MR. DANAS	6

E X H I B I T S

PLAINTIFF'S FOR IDENTIFICATION		
A	Notice of upcoming election of 1971.	41
B	Publication of Masters, Mates and Pilots.	66
C	Annual Report, Form L.M.-2.	117

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

I, ANTHONY MANCUSO, a shorthand reporter within and for the State of New York, do hereby certify:

That THOMAS F. O'CALLGHAN, whose deposition for the defendant is hereinbefore set forth, was duly sworn and that such deposition is a true record of the testimony given by such witness.

And I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 1974.

_____